

**HOUSE . . . . . No. 4365**

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**The Commonwealth of Massachusetts**

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HOUSE OF REPRESENTATIVES, November 8, 2007.

The committee on Telecommunications, Utilities and Energy, to whom was referred the petition of Salvatore F. DiMasi, Brian S. Dempsey and Daniel E. Bosley for legislation to establish the green communities act of 2007 through the development of a comprehensive energy policy for the Commonwealth (House, No. 3965), reports recommending that the accompanying bill (House, No. 4365), ought to pass.

For the committee,

BRIAN S. DEMPSEY.

**The Commonwealth of Massachusetts**

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In the Year Two Thousand and Seven.

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AN ACT RELATIVE TO GREEN COMMUNITIES.

*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 7 of the General Laws is hereby amended  
2 by inserting after Section 9A the following section:—

3 Section 9B. Motor vehicles owned and operated by the Com-  
4 monwealth, as they are removed from service, shall only be  
5 replaced with vehicles that have above-average fuel efficiency for  
6 new vehicles within their size class as determined by the federal  
7 government. The provisions of this section shall not apply in cases  
8 where the purchase of an above-average fuel efficiency vehicle  
9 within their size class as determined by the federal government  
10 would result in an inability of the new vehicle to perform its  
11 intended duties.

1 SECTION 2. Said Chapter 7 is hereby further amended by  
2 inserting after Section 39C the following section:—

3 Section 39D. (a) The commissioner of the division of capital  
4 asset management and maintenance, shall require any state agency  
5 that initiates the construction of a new facility, or substantial reno-  
6 vation of an existing facility that includes the replacement of sys-  
7 tems, components, and other building elements which affect  
8 energy or water consumption, and which is either owned or oper-  
9 ated by the Commonwealth, to design and construct such facility  
10 to minimize the life-cycle cost of the facility by utilizing energy  
11 efficiency, water conservation, or other renewable energy tech-  
12 nologies pursuant to the following criteria:—

13 (i) state agencies shall conduct a life-cycle cost analysis of any  
14 such facility's proposed design that evaluates the short-term and  
15 long-term cost and technical feasibility of using a passive or  
16 active solar energy system, wind-powered energy system or other

17 renewable energy system to provide lighting, heat, water heating,  
18 or electricity. State agencies shall utilize solar or wind-powered  
19 systems when the life-cycle cost analysis has determined that such  
20 systems are economically feasible;

21 (ii) each new educational facility, including any municipal edu-  
22 cational facility financed through the school building assistance  
23 bureau, for which the projected demand for hot water exceeds  
24 1,000 gallons per day, or which operates a heated swimming pool,  
25 shall be constructed, whenever economically and physically fea-  
26 sible, with a solar or other renewable energy system as the pri-  
27 mary energy source for the domestic hot water system or  
28 swimming pool of the facility;

29 (iii) each such state agency shall attempt, in the design, con-  
30 struction, equipping and operation of such facilities, to coordinate  
31 these efforts with the department of clean energy in order to maxi-  
32 mize reliance and benefits of renewable energy research and  
33 investment activities promoted by this act; and

34 (iv) each such state agency shall file with said department a  
35 report detailing its compliance with this section with respect to  
36 each such facility.

37 (b) Notwithstanding Section 11C of Chapter 25A, the division  
38 of capital asset management and maintenance may procure energy  
39 management services jointly with a state agency or building  
40 authority that is procuring energy or related services. Said Section  
41 11C shall apply to the extent determined feasible by the commis-  
42 sioner of the department of clean energy.

43 (c) For purposes of this section, the words “economically-fea-  
44 sible” shall mean providing a payback period of not more than 10  
45 years, as determined by a life-cycle cost analysis. The division of  
46 capital asset management and maintenance shall establish, on or  
47 before July 1, 2008, a methodology for use by agencies in  
48 assessing life-cycle costs. The department of clean energy shall  
49 issue an annual report to the general court detailing the compli-  
50 ance record of all state agencies with the construction and renova-  
51 tion provisions in this section.

1 SECTION 3. Chapter 12 of the General Laws is hereby  
2 amended by striking out Section 11E, as appearing in the 2006

3 Official Edition, and inserting in place thereof the following  
4 section:—

5 Section 11E. (a) There shall be within the office of the attorney  
6 general, an office of ratepayer advocacy. The attorney general  
7 through the office of ratepayer advocacy is hereby authorized to  
8 intervene and appear in and participate in any regulatory or judi-  
9 cial proceedings, federal or state, in which the interests of Massa-  
10 chusetts ratepayers may be involved, including but not limited to  
11 matters affecting utility services rendered or in connection with  
12 any matter involving the rates, charges, prices, tariffs or practices  
13 of an electric company, gas company, generator, transmission  
14 company, telephone company, telegraph or cable television com-  
15 pany doing business in the Commonwealth. The office of  
16 ratepayer advocacy shall have standing to intervene in all pro-  
17 ceedings before the department of public utilities and department  
18 of telecommunications and cable.

19 For the purpose of such intervention the attorney general may  
20 expend such funds as may be appropriated therefore; provided,  
21 however, that such expenditures shall not exceed annually the  
22 amount assessed against such electric, gas, telephone and tele-  
23 graph company under Section 9A of Chapter 6A.

24 The attorney general shall have no authority to expend any of  
25 such funds whenever the expenditure thereof shall conflict with  
26 the duties imposed upon her under the Section 3.

27 (b) The office of ratepayer advocacy shall be under the direc-  
28 tion of an assistant attorney general appointed pursuant to Section  
29 2. The assistant attorney general shall devote his full time and  
30 attention to the duties of the office.

1 SECTION 4. Section 7 of Chapter 21A of the General Laws, as  
2 so appearing, is hereby amended by striking out the first sentence  
3 and inserting in place thereof the following sentence:—

4 In the executive office shall be an office of the secretary, a  
5 department of environmental protection, a department of conser-  
6 vation and recreation, a department of agricultural resources, a  
7 department of fish and game, a department of public utilities, and  
8 a department of clean energy.

1 SECTION 5. Said Chapter 21A is hereby further amended by  
2 adding the following 2 sections:—

3 Section 21. The secretary, in conjunction with the secretary of  
4 administration and finance, shall design and implement a competi-  
5 tive bidding process for the competitive procurement of electric  
6 generation on behalf of any agency, executive office, department,  
7 board, commission, bureau, division, or authority of the Common-  
8 wealth procuring electricity from a local distribution company via  
9 basic service pursuant to subsection (e) of Section 1B of Chapter  
10 164 as of July 1, 2008; provided further that, any such competitive  
11 bid received shall include payment options with rates that remain  
12 uniform for a minimum period of 1 year; and provided further,  
13 that in lieu of designing and implementing a competitive bidding  
14 process as required by this section, the secretary may become a  
15 member of 1 or more programs organized and administered by the  
16 Massachusetts Health and Educational Facilities Authority or its  
17 subsidiary organization for the purpose of such competitive group  
18 purchasing of electricity.

19 Section 22. (a) There is hereby established and set up on the  
20 books of the Commonwealth a separate fund to be known as the  
21 Massachusetts Renewable Energy Trust Fund, hereinafter referred  
22 to as the fund. The secretary shall hold the fund in an account sep-  
23 arate from other funds or accounts. There shall be credited to the  
24 fund any revenue from appropriations or other monies authorized  
25 by the general court and specifically designated to be credited to  
26 the fund, and any gifts, grants, private contributions, investment  
27 income earned on the fund's assets and all other sources and all  
28 amounts collected pursuant to Section 20 of Chapter 25, and any  
29 income derived from the investment of amounts credited to the  
30 fund. All amounts credited to the fund shall be held in trust and  
31 used solely for activities and expenditures consistent with the  
32 public purpose of the fund as set forth in subsection (b) and in no  
33 case shall any money remaining in the fund at the end of a fiscal  
34 year revert to the General Fund.

35 (b) The public purpose of the fund shall be to provide financial  
36 assistance in the form of grants or loans to finance the costs of  
37 renewable energy activities; provided, however, that in further-  
38 ance of the public purposes and interests set forth herein, the

39 secretary shall, on an annual basis, make appropriations from the  
40 fund to be used to:—

41 (i) fund the green communities program established pursuant to  
42 Section 16 of Chapter 25A;

43 (ii) fund the residential installation of renewable energy tech-  
44 nologies, including grants or low-interest loans to residential  
45 ratepayers; and (iii) fund a program, to be established by the sec-  
46 retary, to issue grants to developers of green buildings.

47 (c) The department shall develop a list of qualified home  
48 improvement contractors registered pursuant to Chapter 142A and  
49 qualified to construct, install and complete renewable energy pro-  
50 jects. Only renewable energy projects completed, constructed or  
51 installed by qualified home improvement contractors on said list  
52 compiled by the secretary or those renewable energy projects  
53 completed, constructed or installed via the low-income weather-  
54 ization and fuel assistance program network shall qualify for  
55 funding pursuant to this section.

56 (d) For the purposes of expenditures from the fund, renewable  
57 technologies eligible for assistance shall include, but not be lim-  
58 ited to, the following:—solar photovoltaic and solar thermal elec-  
59 tric energy; wind energy; ocean thermal, wave, or tidal energy;  
60 fuel cells; landfill gas; waste-to-energy which is a component of  
61 conventional municipal solid waste plant technology in commer-  
62 cial use; naturally flowing water and hydroelectric; low emission,  
63 advanced biomass power conversion technologies, such as gasifi-  
64 cation using such biomass fuels as wood, agricultural, or food  
65 wastes, energy crops, biogas, biodiesel, or organic refuse-derived  
66 fuel; and such funds also shall be used for geothermal heating and  
67 cooling projects provided that the number of wells for any such  
68 project exceeds 375 and that the geothermal heating and cooling  
69 systems are owned and utilized by not-for-profit institutions in the  
70 Commonwealth; and storage and conversion technologies con-  
71 nected to qualifying generation projects; provided, however, that  
72 grants from the fund support Massachusetts-based public and pri-  
73 vate enterprises developing technologies to significantly increase  
74 renewable energy. Such funds may also be used for appropriate  
75 renewable projects, as well as for investment by distribution com-  
76 panies in renewables and distributed generation opportunities, if  
77 consistent with this section. The following technologies or fuels

78 shall not be considered renewable energy supplies:— coal, oil,  
79 natural gas except when used in fuel cells, and nuclear power.

80 (e) Massachusetts renewable energy trust fund monies shall be  
81 made available for grants, loans or other support for upgrades to  
82 increase the efficiency or capacity and to reduce the environ-  
83 mental impacts of hydroelectric facilities located in the Common-  
84 wealth. Renewable energy trust fund monies used for this purpose  
85 shall be equal to but shall not exceed a total of \$3,000,000 annu-  
86 ally.

1 SECTION 6. Chapter 25 of the General Laws is hereby  
2 amended by inserting after Section 5D the following section:—

3 Section 5E. The department shall periodically audit all compa-  
4 nies subject to the jurisdiction of said department, including, but  
5 not limited to, review of the following documents:—

6 (i) all financial statements, the balance sheet, the income state-  
7 ment, the statement of cash flows, the statement of retained earn-  
8 ings, the notes to the financial statements, the information in the  
9 annual return to the department of public utilities;

10 (ii) all reconciling mechanisms related to rates, prices or  
11 charges, merger, acquisition or consolidation related costs and  
12 savings three years following the merger, acquisition or consolida-  
13 tion; and,

14 (iii) service quality measure statistics and the service quality  
15 performance at least every 3 years or whenever service quality  
16 penalties equal to or exceed fifty percent of the maximum. Upon  
17 written complaint of the attorney general of the Commonwealth  
18 requesting any independent audit of any company subject to the  
19 jurisdiction of said department, the department shall commence a  
20 proceeding within 30 days of receipt of said complaint for the pur-  
21 pose of ordering the requested audit in a reasonable time. The  
22 results of any audit so ordered shall be filed promptly with the  
23 department of public utilities and the audits shall be paid for by  
24 the company that is the subject of the audit.

1 SECTION 7. Said Chapter 25 is hereby further amended by  
2 inserting after Section 18 the following section:—

3 Section 18A. The commission is hereby authorized to make an  
4 assessment against each steam distribution company under the

5 jurisdictional control of the department of public utilities. Each  
6 steam distribution company shall annually report by March 31 its  
7 intrastate operating revenues for the previous calendar year to said  
8 department. Said assessments shall be made at a rate not  
9 exceeding 0.2 per cent of such intrastate operating revenues, as  
10 shall be determined and certified annually by the commission as  
11 sufficient to reimburse the Commonwealth for funds appropriated  
12 by the general court for the operation and general administration  
13 of the department and for the cost of fringe benefits as established  
14 by the commissioner of administration pursuant to Section 5D of  
15 Chapter 29, including group life and health insurance, retirement  
16 benefits, paid vacations, holidays and sick leave.

17 Each company shall pay the amount assessed against it within  
18 30 days after the date of the notice of assessment from the depart-  
19 ment. Such assessments collected by the department shall be cred-  
20 ited to the General Fund. Any funds unexpended in any fiscal year  
21 for the purposes for which such assessments were made shall be  
22 credited against the assessment to be made in the following fiscal  
23 year and the assessment in the following fiscal year shall be  
24 reduced by any such unexpended amount.

1 SECTION 8. Said Chapter 25 is hereby further amended by  
2 striking out Sections 19 and 20, as appearing in the 2006 Official  
3 Edition, and inserting in place thereof the following 6 sections:—

4 Section 19. (a) The department shall require a mandatory  
5 charge of 2.5 mills per kilowatt-hour for all consumers of the  
6 Commonwealth, except those served by a municipal lighting  
7 plant, to fund energy efficiency programs including, but not lim-  
8 ited to, demand side management programs. The programs shall  
9 be administered by the electric distribution companies and by  
10 municipal aggregators with energy plans certified by the depart-  
11 ment pursuant to subsection (b) of Chapter 164. In addition to the  
12 aforementioned mandatory charge, such programs shall also be  
13 funded by amounts generated by the distribution companies and  
14 municipal aggregators pursuant to the Forward Capacity Market  
15 program administered by ISO New England and by substantially  
16 all amounts generated by all cap and trade pollution control pro-  
17 grams, including, but not limited to, the carbon dioxide allowance  
18 trading mechanism established pursuant to the Regional Green-



19 house Gas Initiative Memorandum of Understanding and the NOx  
20 Allowance Trading Program, and other funding as approved by  
21 the department after consideration of (i) the effect of any rate  
22 increases on residential and commercial consumers, (ii) the avail-  
23 ability of other funds, private or public, utility administered or  
24 otherwise, that may be available for energy efficiency or demand  
25 resources, and (iii) whether past programs have lowered the cost  
26 of electricity to residential and commercial consumers. In autho-  
27 rizing such programs the department shall ensure that they are  
28 delivered in a cost-effective manner capturing all available effi-  
29 ciency opportunities and utilizing competitive procurement  
30 processes to the fullest extent practicable.

31 (b) The department is authorized to approve and fund gas  
32 energy efficiency programs proposed by gas distribution compa-  
33 nies including, but not limited to, demand side management pro-  
34 grams. Energy efficiency activities eligible for funding under this  
35 section shall include geothermal heating and cooling projects pro-  
36 vided that the number of wells for any such project exceeds 375  
37 and that the geothermal heating and cooling systems are owned  
38 and utilized by not-for-profit institutions in the Commonwealth.  
39 Funding may be supplemented by funds authorized by Section 22  
40 of this chapter. The programs shall be administered by the gas dis-  
41 tribution companies. In authorizing such programs the department  
42 shall ensure that they are delivered in a cost-effective manner cap-  
43 turing all available efficiency opportunities and utilizing competi-  
44 tive procurement processes to the fullest extent practicable.

45 (c) Electric and gas energy efficiency program funds shall be  
46 allocated to customer classes, including the low-income residen-  
47 tial sub-class, in proportion to their contributions to those funds;  
48 provided, however, that at least 10 per cent of the amount  
49 expended for electric energy efficiency programs and at least 20  
50 per cent of the amount expended for gas energy efficiency pro-  
51 grams shall be spent on comprehensive low-income residential  
52 demand-side management and education programs; and provided  
53 further that for a period of 3 years subsequent to the expiration of  
54 each electric or gas company efficiency plan or agreement in  
55 place as of January 1, 2008, the amount and percentage allocated  
56 to the low-income residential sub-class for the electric or gas  
57 company shall not be reduced from that provided under law,

58 guidelines and agreements in force as of January 1, 2008. The  
59 low-income residential demand-side management and education  
60 programs shall be implemented through the low-income weather-  
61 ization and fuel assistance program network and shall be coordi-  
62 nated with all electric and gas distribution companies in the  
63 Commonwealth with the objective of standardizing implementa-  
64 tion. Such programs shall be screened only through cost-effective-  
65 ness testing which compares the value of program benefits to  
66 society to program costs to ensure that programs are designed to  
67 obtain energy savings and system benefits whose value is greater  
68 than the costs of the programs.

69 Section 20. The department shall require a mandatory charge  
70 per kilowatt-hour for all electricity consumers of the Common-  
71 wealth, except those consumers served by a municipal lighting  
72 plant which does not supply generation service outside its own  
73 service territory or does not open its service territory to competi-  
74 tion at the retail level, to support the development and promotion  
75 of clean and renewable energy projects. Said charge shall be in the  
76 amount of  $\frac{1}{2}$  of 1 mill per kilowatt-hour. All revenues generated  
77 by said mandatory charge shall be deposited into the Massachu-  
78 setts Renewable Energy Trust Fund, established pursuant to  
79 Section 22 of Chapter 21A.

80 Section 21. (a) In order to mitigate capacity and energy costs  
81 for all customers, the department shall ensure that, subject to sub-  
82 section (c) of Section 19 the Commonwealth's electric and natural  
83 gas resource needs shall first be met through all available energy  
84 efficiency and demand reduction resources that are cost effective  
85 and all such resources that are less expensive than supply. The  
86 cost of supply shall be determined by the department with consid-  
87 eration of the average cost of generation to all customer classes  
88 over the previous 24 months.

89 (b)(1) On or before March 30, 2008, and every 3 years there-  
90 after, the electric distribution utilities and municipal aggregators  
91 with certified efficiency plans shall jointly prepare an electric  
92 Efficiency Investment Plan and the natural gas distribution utili-  
93 ties shall jointly prepare a natural gas plan. Each of the plans shall  
94 provide for the acquisition of all available energy efficiency and  
95 demand resources that are cost effective and all such resources  
96 that are less expensive than supply and shall be prepared in coor-

97 dination with the energy efficiency advisory council, established  
98 by Section 22 of this chapter.

99 (2) The plan shall include:— (a) an assessment of the estimated  
100 lifetime cost, reliability, and magnitude of all available energy  
101 efficiency and demand reduction resources that are cost effective  
102 and all such resources that are less expensive than supply, (b) the  
103 amount of demand resources, including efficiency, conservation,  
104 demand response and load management, that are proposed to be  
105 acquired under the plan and the basis for this determination, (c)  
106 the estimated energy cost savings the acquisition of such resources  
107 will provide to electricity and natural gas consumers, including  
108 but not limited to reductions in capacity and energy costs and  
109 increases in rate stability and affordability for low-income cus-  
110 tomers, (d) programs, which may include, but not be limited to:—

111 (i) efficiency and load management programs;

112 (ii) demand response programs;

113 (iii) research, development and commercialization of products  
114 or processes which are more energy-efficient than those generally  
115 available;

116 (iv) development of markets for such products and processes,  
117 including recommendations for new appliance and product effi-  
118 ciency standards;

119 (v) support for energy use assessment, real-time monitoring  
120 systems, engineering studies and services related to new construc-  
121 tion or major building renovation, including integration of such  
122 assessments, systems, studies and services with building energy  
123 codes programs and processes, or those regarding the develop-  
124 ment of high performance or sustainable buildings that exceed  
125 code;

126 (vi) the design, manufacture, commercialization and purchase  
127 of energy-efficient appliances and heating, air conditioning and  
128 lighting devices;

129 (vii) program planning and evaluation;

130 (viii) programs providing commercial, industrial and institu-  
131 tional customers with greater flexibility and control over demand  
132 side investments funded by the programs at their facilities; and

133 (ix) public education regarding energy efficiency and demand  
134 management; provided, however, that not more than 1 per cent of  
135 the fund shall be expended for items (iii) and (iv) collectively,

136 without authorization from the advisory council, (e) a proposed  
137 mechanism which provides performance incentives to the compa-  
138 nies based on their success in meeting or exceeding the goals in  
139 the plan, (f) the budget that is needed to support the programs, (g)  
140 a fully reconciling funding mechanism which may include, but not  
141 be limited to, the charge authorized by Section 19, and (h) the  
142 estimated amount of reduction in peak load that will be reduced  
143 from each option and any estimated economic benefits for such  
144 projects including job retention, job growth, or economic develop-  
145 ment.

146 (3) The plan shall also include data showing the percentage of  
147 all monies collected that will be used for direct consumer benefit,  
148 such as incentives and technical assistance to carry out the provi-  
149 sions of the plan. With the approval of the advisory council, the  
150 plan may also include a mechanism to provide priority to projects  
151 that have substantial benefits in reducing peak load or have eco-  
152 nomic development, job creation or job retention benefits.

153 (4) (a) The electric and natural gas plans will be for a 3 year  
154 period and shall be prepared every 3 years by the natural gas and  
155 electric utilities and municipal aggregators with certified effi-  
156 ciency plans.

157 (b) Programs included in the plan shall be screened through  
158 cost-effectiveness testing which compares the value of program  
159 benefits to the program costs to ensure that programs are designed  
160 to obtain energy savings and system benefits whose value is  
161 greater than the costs of the programs. Program cost-effectiveness  
162 shall be reviewed periodically by the department as well as by the  
163 council. If a program is determined to fail the cost-effectiveness  
164 test as part of the review process, it shall either be modified to  
165 meet the test or shall be terminated.

166 (c) The plan shall be submitted for approval and comment by  
167 the energy efficiency advisory council. The companies shall pro-  
168 vide any additional information requested by the council that is  
169 relevant to the consideration of the plan. The council shall review  
170 the plan and any additional information and submit its approval or  
171 comments to the natural gas and electric distribution companies  
172 and municipal aggregators, not later than three months after sub-  
173 mission of the plan. The natural gas and electric distribution com-

174 panies and municipal aggregators may make any changes or revi-  
175 sions to reflect the input of the council.

176 (c)(1) The natural gas and electric distribution companies and  
177 municipal aggregators shall submit the plan, together with the  
178 council's approval or comments and a statement of any unresolved  
179 issues to the department on or before June 30, 2008. The depart-  
180 ment shall consider the plan and shall provide an opportunity for  
181 interested parties to be heard in an adjudicatory proceeding.

182 (2) Not later than 90 days after submission of the plan, the  
183 department shall issue a decision on the plan which ensures that  
184 the electric and natural gas distribution utilities have identified  
185 and will capture all energy efficiency and demand reduction  
186 resources that are cost effective and all such resources that are less  
187 expensive than supply and shall approve, or modify and approve,  
188 the plan accordingly. In the case of municipal aggregators, the  
189 department shall approve a fully reconciling funding mechanism  
190 for the approved plan that requires coordination between the dis-  
191 tribution company and municipal aggregator to ensure program  
192 costs are collected, allocated and distributed in a cost effective,  
193 fair and equitable manner.

194 Section 22. (a) The department shall appoint and convene an  
195 energy efficiency advisory council which shall consist of not more  
196 than 12 members, including at least 1 person representing:—(i)  
197 residential consumers, (ii) the low-income weatherization and fuel  
198 assistance program network, (iii) environmental, (iv) business  
199 including large C&I end-users, (v) manufacturing, (vi) energy  
200 efficiency experts, (vii) labor, (viii) the department of environ-  
201 mental protection, (ix) the attorney general (x) the executive  
202 office of housing and economic development, and (xi) the depart-  
203 ment of clean energy. Interested parties shall apply to the depart-  
204 ment for designation as members. Members shall serve for terms  
205 of 5 years and may be reappointed. The commissioner of the  
206 department of clean energy will serve as chairperson of the  
207 council. The representative of energy efficiency experts may not  
208 have a contractual relationship with any electric or natural gas dis-  
209 tribution company or electricity or natural gas provider. Each of  
210 the electric and natural gas distribution companies, a heating oil  
211 industry representative, and a representative of energy efficiency  
212 businesses, shall be non-voting, ex-officio members.

213 (b) The council, as part of the approval process by the depart-  
214 ment, shall seek to maximize net economic benefits through  
215 energy efficiency and load management resources and to achieve  
216 state energy, capacity, climate, and environmental goals through a  
217 sustained and integrated statewide energy efficiency effort. The  
218 council shall review and approve demand resource program plans  
219 and budgets, work with program administrators in preparing  
220 energy resource assessments, determine the economic, system  
221 reliability, climate and air quality benefits of efficiency and load  
222 management resources, conduct and recommend relevant  
223 research, and recommend long term efficiency and load manage-  
224 ment goals for the Commonwealth to maximize economic savings  
225 and achieve environmental goals. Approval of efficiency and  
226 demand resource plans and budgets shall require a two-thirds  
227 majority vote. The council shall, as part of its review of plans,  
228 examine opportunities to offer joint programs providing similar  
229 efficiency measures that save more than one fuel resource or oth-  
230 erwise to coordinate programs targeted at saving more than one  
231 fuel resource. Any costs for joint programs shall be allocated  
232 equitably among the efficiency programs.

233 (c) The council may retain expert consultants provided such  
234 consultants may not have any contractual relationship with an  
235 electric or natural gas distribution company or electricity or nat-  
236 ural gas provider. The council shall annually submit to the depart-  
237 ment a proposal regarding the level of funding required for the  
238 retention of expert consultants and reasonable administrative costs  
239 which proposal shall be approved by the department either as sub-  
240 mitted or as modified by the department. The department shall  
241 allocate funds sufficient for these purposes from the natural gas  
242 and electric efficiency funding authorized pursuant to Section 19;  
243 provided, however, that such allocation shall not exceed 1 per cent  
244 of such funding on an annual basis. On or before December 31,  
245 2008, the advisory council shall undertake, using third party  
246 experts, a study which examines the energy efficiency and  
247 demand response programs in Massachusetts, including all public  
248 and private funding sources. Included in this study shall be an  
249 audit of all existing energy efficiency and demand response pro-  
250 grams to identify the costs and benefits associated with such pro-  
251 grams. The consultants used under this section shall be experts in

252 energy efficiency and shall be independent and not in receipt of  
253 disbursement of funds from any funding connected with energy  
254 efficiency or demand response programs, except as in the capacity  
255 as third party independent experts.

256 (d) The natural gas and electric distribution companies and  
257 municipal aggregators shall provide quarterly reports to the  
258 council on the implementation of the plan. The reports shall  
259 include a description of the each company's progress in imple-  
260 menting the plan, a summary of the savings secured to date and  
261 such other information as the council shall determine appropriate.  
262 The council shall provide an annual report to the joint committee  
263 on telecommunications, utilities and energy, and the department  
264 on the implementation of the plan which includes descriptions of  
265 the programs, expenditures, cost-effectiveness and savings and  
266 other benefits during the previous year.

267 Section 23. As used in Sections 19, 21 and 22, the following  
268 words shall, unless the context clearly requires otherwise, have  
269 the following meanings:—

270 “Direct consumer benefit”, customer incentives and assistance  
271 provided directly to the consumer.

272 “Added costs to consumers”, shall include any added costs  
273 associated with carrying out the program compared to those costs  
274 associated with carrying out the program during the previous 3  
275 year plan period.

276 Section 24. Except as otherwise permitted in this section, in any  
277 contested on-the-record proceeding, no person outside the execu-  
278 tive office shall make or knowingly cause to be made to any deci-  
279 sional employee, and no decisional employee shall make or  
280 knowingly cause to be made to any person outside the executive  
281 office, any off-the-record communication. The communication  
282 prohibited by this section shall apply to:—

283 (i) proceedings initiated by the commission from the time an  
284 order initiating the proceeding is issued;

285 (ii) proceedings returned to the commission on judicial remand  
286 from the date the court issues said mandate;

287 (iii) complaints initiated by the filing of the complaint with the  
288 commission, or from the date the commission initiates an investi-  
289 gation other than an investigation exempted from this section;

290 (iv) matters that have been assigned to an administrative law  
291 judge or hearing officer for adjudication or other resolution; and  
292 (v) all other proceedings from the time of the filing of an inter-  
293 vention disputing any material issue that is the subject of a pro-  
294 ceeding.

295 The prohibitions herein prescribed shall remain in force  
296 until:—

297 (i) a final commission decision or, other final order on the  
298 merits of the proceeding, is issued; or, when applicable, after the  
299 time for seeking rehearing or reconsideration of a final commis-  
300 sion decision, or other final order disposing of the merits, expires;

301 (ii) the commission otherwise terminates the proceeding; or

302 (iii) the proceeding is no longer contested.

303 Except as provided in herein, the general prohibitions of this  
304 section shall not apply to:—

305 (i) an off-the-record communication permitted by law and  
306 authorized by the commission;

307 (ii) an off-the-record communication related to any emergency  
308 concerning a company or facility regulated by the executive office  
309 or a company or facility that provides executive office-regulated  
310 services, involving injury or threat of injury to persons, property  
311 or the environment, subject to disclosure provisions of this  
312 section;

313 (iii) an off-the-record communication provided for in a written  
314 agreement among all parties to a proceeding that has been  
315 approved by the commission;

316 (iv) an off-the-record written communication from a non-party  
317 elected official, subject to disclosure under this section;

318 (v) an off-the-record communication to or from a federal, state  
319 or local agency that is not a party in the commission proceeding,  
320 subject to disclosure under this section, if the communication  
321 involves:— (a) an oral or written response to a request for infor-  
322 mation made by the commission or commission staff; or (b) an  
323 off-the-record communication involving individual landowners  
324 who are not parties to the proceeding and whose property would  
325 be used or abuts property that would be used by the project that is  
326 the subject of the proceeding, subject to disclosure under this  
327 section.



328 Except as herein provided, prohibited off-the-record communi-  
329 cations will not be considered part of the record for decision in the  
330 applicable proceeding. Any decisional employee who makes or  
331 receives a prohibited off-the-record communication shall promptly  
332 submit to the chairman that communication, if written, or a sum-  
333 mary of the substance of that communication, if oral. The  
334 chairman shall place the communication or the summary in the  
335 public file associated with, but not part of, the decisional record of  
336 the proceeding. Any party may file a response to a prohibited off-  
337 the-record communication placed in the public file. A party may  
338 also file a written request to have the prohibited off-the-record  
339 communication and the response included in the decisional record  
340 of the proceeding. The communication and the response will be  
341 made a part of the decisional record if such a request is granted by  
342 the commission. The chairman shall instruct any person making a  
343 prohibited written off-the-record communication to serve the doc-  
344 ument, pursuant to regulations promulgated pursuant to this  
345 chapter, on all parties listed on the commission's official service  
346 list for the applicable proceeding.

347 Any document, or a summary of the substance of any oral com-  
348 munication, obtained through an exempt off-the-record communi-  
349 cation promptly shall be submitted to the chairman and placed in  
350 the decisional record of the relevant commission proceeding. Any  
351 person may respond to an exempted off-the-record communi-  
352 cation. The chairman shall, not less than every 30 days, issue a  
353 public notice listing any prohibited off-the-record communi-  
354 cations or summaries thereof received. For each prohibited off-the-  
355 record communication the chairman places in the non-decisional  
356 public file the notice will identify the maker of the off-the-record  
357 communication, the date the off-the-record communication was  
358 received, and the docket number to which it relates. The chairman  
359 shall, not less than every 30 days, issue a public notice listing any  
360 exempt off-the-record communications or summaries of the com-  
361 munication received by the chairman for inclusion in the deci-  
362 sional record and required to be disclosed under this section. The  
363 public notice required under this paragraph will be posted and dis-  
364 seminated in the publication manner authorized by the commis-  
365 sion for its official proceedings.

366 If a party or its agent or representative knowingly makes, or  
367 causes to be made, a prohibited off-the-record communication, the  
368 commission may require the party, agent, or representative to  
369 show cause why the party's claim or interest in the proceeding  
370 should not be dismissed, denied, disregarded, or otherwise  
371 adversely affected because of the prohibited off-the-record com-  
372 munication. If a person knowingly makes or causes to be made a  
373 prohibited off-the-record communication, the commission may  
374 disqualify and deny the person, temporarily or permanently, the  
375 privilege of practicing or appearing before it. The commission  
376 may, by rule or order, modify any provision of this section as it  
377 applies to all or part of a proceeding, to the extent permitted by  
378 law. The provisions of this section are not intended to limit the  
379 authority of a decisional employee to decline to engage in per-  
380 mitted off-the-record communications, or where not required by  
381 any law, statute or regulation, to make a public disclosure of any  
382 exempted off-the-record communication.

383 The department shall issue regulations that implement this  
384 section. Any regulations issued by the department shall incorpo-  
385 rate all the provisions contained herein, provided, however, that  
386 said regulations may contain additional provisions that are stricter  
387 than the prohibitions of this section provided that such provisions  
388 are consistent with the intent of this section.

1 SECTION 9. Chapter 25A of the General Laws is hereby  
2 amended by striking Sections 1 and 2, as so appearing, and  
3 inserting in place thereof the following 2 sections:—

4 Section 1. There shall be a department of clean energy which  
5 shall be under the supervision, direction and control of a commis-  
6 sioner of clean energy. The commissioner shall be appointed by  
7 the governor and shall be a person of skill and experience in the  
8 field of energy regulation or policy. The commissioner shall be the  
9 executive and administrative head of the department and shall be  
10 responsible for administering and enforcing the provisions of law  
11 relative to the department and to each administrative unit thereof.  
12 The commissioner shall serve at the pleasure of the governor,  
13 shall receive such salary as may be determined by law, and shall  
14 devote his full time to the duties of his office. In the case of an  
15 absence or vacancy in the office of the commissioner, or in the

16 case of disability as determined by the governor, the governor  
17 may designate an acting commissioner to serve as commissioner  
18 until the vacancy is filled or the absence or disability ceases. The  
19 acting commissioner shall have all the powers and duties of the  
20 commissioner and shall have similar qualifications as the commis-  
21 sioner.

22 Section 2. (a) There shall be within the department of clean  
23 energy 3 divisions, a division of energy efficiency which shall  
24 work with the department of public utilities regarding the energy  
25 efficiency programs; a division of renewable and alternative  
26 energy development which shall oversee and coordinate activities  
27 that seek to maximize the installation of renewable energy gener-  
28 ating resources that will provide benefits to ratepayers, advance  
29 the production and use of bio-fuels and other alternative fuels as  
30 the division may define by regulation, and administer the Massa-  
31 chusetts renewable portfolio standard, established in Section 11F;  
32 and a division of green communities which shall serve as the prin-  
33 cipal point of contact for municipalities and other governmental  
34 bodies concerning all matters under the jurisdiction of the depart-  
35 ment of clean energy. Said divisions shall be headed by a director  
36 who shall be appointed by the commissioner and shall be a person  
37 of skill and experience in the field of energy efficiency, renewable  
38 or alternative energy, and energy regulation or policy, respec-  
39 tively. The directors shall be the executive and administrative  
40 head of their respective division and shall be responsible for  
41 administering and enforcing the provisions of law relative to said  
42 division and to each administrative unit thereof. The director shall  
43 serve at the pleasure of the commissioner, shall receive such  
44 salary as may be determined by law, and shall devote his full time  
45 to the duties of his office. In the case of an absence or vacancy in  
46 the office of the director, or in the case of disability as determined  
47 by the commissioner, the commissioner may designate an acting  
48 director to serve as director until the vacancy is filled or the  
49 absence or disability ceases. The acting director shall have all the  
50 powers and duties of the director and shall have similar qualifica-  
51 tions as the director. The directors shall be responsible for  
52 carrying out the work of their respective divisions under the  
53 supervision, direction, and control of the commissioner.

54 (b) The commissioner may from time to time, subject to appro-  
55 priation, establish within the department such administrative units  
56 as may be necessary for the efficient and economical administra-  
57 tion of the department, and when necessary for such purpose, may  
58 abolish any such administrative unit, or may merge any two or  
59 more of them, as the commissioner deems advisable. The commis-  
60 sioner shall prepare and keep current a statement of the organiza-  
61 tion of the department, of the assignment of its functions to its  
62 various administrative units, offices and employees, and of the  
63 places at which and the methods whereby the public may receive  
64 information or make requests. Such statement shall be known as  
65 the department's description of organization. A current copy of  
66 the description of organization shall be kept on file in the office of  
67 the secretary of state and in the office of the secretary of adminis-  
68 tration.

69 (c) Subject to appropriation, the commissioner may appoint  
70 such persons as he shall deem necessary to perform the functions  
71 of the department, provided that the provisions of Chapter 31 and  
72 Section 9A of Chapter 30 shall not apply to any person holding  
73 any such appointment. Every person so appointed to any position  
74 in the department shall have experience and skill in the field of  
75 such position. So far as practicable in the judgment of the com-  
76 missioner, appointments to such positions in the department shall  
77 be made by promoting or transferring employees of the Common-  
78 wealth serving in positions which are classified under said  
79 Chapter 31, and such appointments shall at all times reflect the  
80 professional needs of the administrative unit affected. If an  
81 employee serving in a position which is classified under said  
82 Chapter 31 or in which an employee has tenure by reason of said  
83 Section 9A of Chapter 30 shall be appointed to a position within  
84 this office which is not subject to the provisions of said Chapter  
85 31, the employee shall upon termination of his service in such  
86 position be restored to the position which he held immediately  
87 prior to such appointment; provided, however, that his service in  
88 such position shall be determined by the civil service commission  
89 in accordance with the standards applied by said commission in  
90 administering said Chapter 31. Such restoration shall be made  
91 without impairment of his civil service status or tenure under said  
92 Section 9A of Chapter 30 and without loss of seniority, retirement

93 or other rights to which uninterrupted service in such prior posi-  
94 tion would have entitled him. During the period of such appoint-  
95 ment, each person so appointed from a position in the classified  
96 civil service shall be eligible to take any competitive promotional  
97 examination for which he would otherwise have been eligible.

1 SECTION 10. Section 3 of said Chapter 25A, as so appearing,  
2 is hereby amended by striking out, in line 11, the words “division  
3 of energy resources” and inserting in place thereof the following  
4 words:— department of clean energy.

1 SECTION 11. Section 3 of said Chapter 25A as so appearing is  
2 hereby amended by inserting after the definition of “Energy man-  
3 agement services” the following definition —  
4 “Energy savings”, a measured reduction in fuel, energy, oper-  
5 ating or maintenance costs resulting from the implementation of 1  
6 or more energy conservation measures or projects, provided that  
7 any payback analysis to evaluate the energy savings of a geot-  
8 hermal energy system to provide heating, cooling or water heating  
9 over its expected lifespan shall include gas and electric consump-  
10 tion savings, maintenance savings and shall use an average esca-  
12 lation rate based on the most recent information compiled by the US  
13 Department of Energy’s Energy Information Administration for  
14 gas and electric rates.

1 SECTION 12. Section 5 of said Chapter 25A, as so appearing,  
2 is hereby amended by striking out the first sentence and inserting  
3 in place thereof the following sentence:—  
4 The commissioner of clean energy shall file an annual report  
5 with the joint committee on telecommunications, utilities and  
6 energy and the house and senate committees on ways and  
7 means:— (a) listing the number of employees of the department  
8 of clean energy, the salaries and titles of each employee, the  
9 source of funding for the salaries of said employees and the pro-  
10 jected date when federal funds for such positions are expected to  
11 terminate; (b) listing and describing grant programs of the depart-  
12 ment funded by the federal government, including the amount of  
13 funding by grant; (c) listing and describing other programs of the  
14 department, including the amount and source of funding by

15 program; and (d) describing the energy audit, energy conservation  
16 and alternative energy bond programs by categories of projects  
17 prospective grantees under each category, if known, and amounts  
18 to be spent by category and grantee.

1 SECTION 13. Section 6 of said Chapter 25A, as so appearing,  
2 is hereby amended by striking out, in line 1, the words “division  
3 of energy resources” and inserting in place thereof the following  
4 words:— department of clean energy.

1 SECTION 14. Section 7 of said Chapter 25A, as so appearing,  
2 is hereby amended by striking out, in lines 1, 21 and 22 and in  
3 line 29, the words “division of energy resources” and inserting in  
4 place thereof, in each instance, the following words:— department  
5 of clean energy.

1 SECTION 15. Section 8 of said Chapter 25A, as so appearing,  
2 is hereby amended by striking out, in line 12, the words “division  
3 of energy resources” and inserting in place thereof the following  
4 words:— department of clean energy.

1 SECTION 16. Section 9 of said Chapter 25A, as so appearing,  
2 is hereby amended by striking out, in line 10 the words “division  
3 of energy resources” and inserting in place thereof the following  
4 words:— department of clean energy.

1 SECTION 17. Section 10 of said Chapter 25A is hereby  
2 repealed.

1 SECTION 18. Section 11E of said Chapter 25A, as so  
2 appearing, is hereby amended by striking out, in line 1, the words  
3 “division of energy resources” and inserting in place thereof the  
4 following words:—department of clean energy.

1 SECTION 19. Said Section 11F of said Chapter 25A, as so  
2 appearing is hereby further amended by striking out subsections  
3 (a) and (b) and inserting in place thereof the following 5 subsec-  
4 tions:—

5 (a) The department of clean energy, shall establish a renewable  
6 energy portfolio standard for all retail electricity suppliers selling  
7 electricity to end-use customers in the Commonwealth. By  
8 December 31, 1999, the department shall determine the actual per-  
9 centage of kilowatt-hours sales to end-use customers in the Com-  
10 monwealth which is derived from existing renewable energy  
11 generating sources. Every retail supplier shall provide a minimum  
12 percentage of kilowatt-hours sales to end-use customers in the  
13 Commonwealth from new renewable energy generating sources,  
14 according to the following schedule:—

15 (i) an additional 1 per cent of sales by December 31, 2003, or  
16 one calendar year from the final day of the first month in which  
17 the average cost of any renewable technology is found to be  
18 within 10 per cent of the overall average spot-market price per  
19 kilowatt-hour for electricity in the Commonwealth, whichever is  
20 sooner;

21 (ii) an additional one-half of 1 per cent of sales each year there-  
22 after until December 31, 2009; and

23 (iii) an additional 1 per cent of sales every year thereafter. For  
24 the purpose of this subsection, a new renewable energy generating  
25 source is one that begins commercial operation after December  
26 31, 1997, or that represents an increase in generating capacity  
27 after December 31, 1997, at an existing facility. Commencing on  
28 January 1, 2009, such minimum percentage requirement shall be  
29 known as the “Class I” renewable energy generating source  
30 requirement.

31 (b) For the purposes of this section, a renewable energy gener-  
32 ating source is one which generates electricity using any of the  
33 following:—

34 (i) solar photovoltaic or solar thermal electric energy;

35 (ii) wind energy;

36 (iii) ocean thermal, wave, or tidal energy;

37 (iv) fuel cells utilizing renewable fuels;

38 (v) landfill gas;

39 (vi) waste-to-energy which is a component of conventional  
40 municipal solid waste plant technology in commercial use;

41 (vii) naturally flowing water and hydroelectric;

42 (viii) low-emission advanced biomass power conversion tech-  
43 nologies using such biomass fuels as wood, agricultural, or food

44 wastes, energy crops, biogas, biodiesel, or organic refuse-derived  
45 fuel; and

46 (ix) geothermal energy; provided, however, that after December  
47 31, 1998, the calculation of a percentage of kilowatt-hours sales to  
48 end-use customers in the Commonwealth from new renewable  
49 generating sources shall exclude clauses (vi) and (vii) herein. The  
50 department may also consider any previously operational biomass  
51 facility retrofitted with advanced conversion technologies as a  
52 renewable energy generating source.

53 (c) Commencing on January 1, 2008, such new renewable  
54 energy generating sources meeting the requirements of this para-  
55 graph shall be known as Class I renewable energy generating  
56 sources. For the purposes of this section, a new renewable energy  
57 generating source is one that begins commercial operation after  
58 December 31, 1997, or the net increase from incremental new  
59 generating capacity after December 31, 1997 at an existing  
60 facility, where the facility generates electricity using any of the  
61 following:—

62 (i) solar photovoltaic or solar thermal electric energy;

63 (ii) wind energy;

64 (iii) ocean thermal, wave, or tidal energy;

65 (iv) fuel cells utilizing renewable fuels;

66 (v) landfill gas;

67 (vi) incremental energy resulting from increased capacity and  
68 efficiency at hydroelectric facilities licensed by FERC after 1986,  
69 or at hydroelectric facilities that receive FERC approval to con-  
70 struct improvements necessary to provide such incremental  
71 energy, so long as such increased capacity and efficiency does not  
72 involve pumped storage of water; provided that only such  
73 improvements to a hydroelectric facility made after January 1,  
74 1998, and only up to 5 megawatts per facility of incremental new  
75 energy attributable to such improvements, shall be considered a  
76 new renewable energy generating source; and provided further  
77 that the facility meets all applicable current state and federal fish  
78 passage requirements;

79 (vii) low-emission, advanced biomass power conversion tech-  
80 nologies, such as gasification using fuels such as wood, agricul-  
81 tural, or food wastes, energy crops, biogas, biodiesel, or organic  
82 refuse-derived fuel; or



83 (viii) geothermal energy.

84 (d) Commencing on January 1, 2009, every retail electric sup-  
85 plier providing service under contracts executed or extended on or  
86 after January 1, 2009, shall also provide a minimum percentage of  
87 kilowatt-hour sales to end-use customers in the Commonwealth  
88 from Class II renewable energy generating sources. For the pur-  
89 poses of this section, a Class II renewable energy generating  
90 source is one that began commercial operation before December  
91 31, 1997 and generates electricity using any of the following:—

92 (i) solar photovoltaic or solar thermal electric energy;

93 (ii) wind energy;

94 (iii) ocean thermal, wave, or tidal energy;

95 (iv) fuel cells utilizing renewable fuels;

96 (v) landfill gas;

97 (vi) waste-to-energy which is a component of conventional  
98 municipal solid waste plant technology in commercial use;

99 (vii) a run-of-the river hydroelectric facility that does not uti-  
100 lize a dam constructed subsequent to December 31, 1997, does not  
101 entail any new impoundment or diversion of water subsequent to  
102 December 31, 1997, and where such facility (a) has a nameplate  
103 capacity of 5 megawatts or less, (b) meets all applicable current  
104 state and federal fish passage requirements, and (c) has not been  
105 recommended for decommissioning or removal by any federal,  
106 state or local agency responsible for environmental protection or  
107 public safety with regulatory jurisdiction over rivers, dams or  
108 hydroelectric facilities;

109 (viii) low-emission biomass power conversion technologies,  
110 such as gasification using fuels such as wood, agricultural, or food  
111 wastes, energy crops, biogas, biodiesel, or organic refuse-derived  
112 fuel; or

113 (ix) geothermal energy. After conducting administrative pro-  
114 ceedings, the department may add technologies or technology cat-  
115 egories to any above list; provided, however, that the following  
116 technologies shall not be considered renewable energy supplies:—  
117 coal, oil, natural gas, and nuclear power.

118 (e) On or before June 30, 2008, the department of clean energy  
119 shall determine the actual percentage of kilowatt-hour sales to  
120 end-use customers in the Commonwealth which was derived from  
121 Class II generating sources in 1998. On or before January 1, 2009,

122 every retail supplier shall annually provide to end-use customers  
123 in the Commonwealth, generation attributes from Class II energy  
124 facilities in the amount equal to the percent of the kilowatt hour  
125 sales from Class II energy generating sources in 1998, and shall  
126 provide at least that percentage of Class II generation attributes  
127 each year thereafter. Such minimum percentage requirement for  
128 kilowatt-hour sales from Class II energy generating sources may  
129 be adjusted by the department as necessary to promote the con-  
130 tinued operation of existing energy generating resources that meet  
131 the requirements of subsection (d), and may be met through kilo-  
132 watt-hour sales to end-use customers from any energy generating  
133 source meeting the requirements of said subsection (d). For pur-  
134 poses of calculating a retail supplier's minimum percentage of  
135 kilowatt-hour sales of Class II renewable energy generating  
136 sources, retail supplier's annual, kilowatt-hours sales to end-use  
137 customers shall be net of kilowatt-hours of energy that such retail  
138 supplier is obligated to purchase in that year pursuant to an agree-  
139 ment that was entered into prior to October 1, 2007. The depart-  
140 ment shall establish and maintain regulations allowing for a retail  
141 supplier to discharge its obligations under this section by making  
142 an alternative compliance payment in an amount established by  
143 the department. The department shall establish and maintain regu-  
144 lations outlining procedures by which each retail supplier shall  
145 annually submit for the department's review a filing illustrating  
146 the retail supplier's compliance with the requirements of this  
147 section.

1 SECTION 20. Said Chapter 25A is hereby further amended by  
2 inserting after Section 11F the following section:—

3 Section 11F½ (a). The department of clean energy shall estab-  
4 lish an alternative energy portfolio standard for all retail elec-  
5 tricity suppliers selling electricity to end-use customers in the  
6 Commonwealth. Beginning January 1, 2009, every retail supplier  
7 shall provide a percentage of kilowatt-hour sales, as determined  
8 by the department, to end-use customers in the Commonwealth  
9 from alternative energy generating sources, and the department  
10 shall annually thereafter determine the minimum percentage of  
11 kilowatt-hour sales to end-use customers in the Commonwealth  
12 which shall be derived from alternative energy generating sources.

13 For the purposes of this section, an alternative energy generating  
14 source is one which generates electricity using any of the  
15 following:—

16 (i) coal gasification;

17 (ii) combined heat and power; or

18 (iii) any other alternative energy technology approved by the  
19 department pursuant to an administrative proceeding conducted  
20 pursuant to Chapter 30A; provided, however, that the following  
21 technologies shall not be considered alternative energy sup-  
22 plies:— coal, except when used in coal gasification, oil, and nat-  
23 ural gas, except when used in coal gasification. The department  
24 shall set emission performance standards including for CO<sub>2</sub> for all  
25 technologies included in this section consistent with the state's  
26 environmental goals.

27 (b) The department shall promulgate regulations allowing for a  
28 retail supplier to discharge its obligations under this section by  
29 making an alternative compliance payment in an amount estab-  
30 lished by the department. Such regulations shall outline proce-  
31 dures by which each retail supplier shall annually submit for the  
32 department's review a filing illustrating the retail supplier's com-  
33 pliance with the requirements of this section.

1 SECTION 21. Section 11G of said Chapter 25A is hereby  
2 repealed.

1 SECTION 22. Section 11H of said Chapter 25A, as appearing  
2 in the 2006 Official Edition, is hereby amended by striking out, in  
3 line 1, the words "division of energy resources" and inserting in  
4 place thereof the following words:— department of clean energy.

1 SECTION 23. Said Chapter 25A is hereby further amended by  
2 inserting after Section 11L the following section:—

3 Section 11M. For the purposes of this section, the following  
4 words shall have the following meanings:—

5 "Capacity resource", an external resource as defined by ISO-  
6 NE's Manual M-20, Section 3.8.7. External Resources.

7 "Generator", the person that owns, directly or indirectly, the  
8 renewable energy generating source that is located in a control

9 area adjacent to the ISO-NE Control Area, but does not include  
10 any person under contract with the Generator to purchase the  
11 renewable energy or renewable energy credits associated with  
12 such renewable energy.

13 “Person”, any individual, corporation, limited liability com-  
14 pany, general or limited partnership, trust, association or other  
15 entity.

16 A renewable energy generating source as described in Section  
17 11F that is physically located in or relocated to a control area  
18 adjacent to the ISO New England (“ISO-NE”) control area may  
19 qualify as an eligible renewable energy generating source under  
20 Section 11F, provided however, that the renewable energy elec-  
21 tricity generated by such renewable energy generating source was  
22 delivered into and used by consumers within the ISO-NE control  
23 area.

24 The delivery of renewable energy into the ISO-NE as described  
25 in the second paragraph shall not qualify under the renewable  
26 portfolio standard, notwithstanding such delivery into the ISO-NE  
27 control area, unless the generator of such renewable energy:—

28 (i) initiates the import transaction pursuant to a bilateral sales  
29 contract with a purchaser of the renewable energy located in the  
30 ISO-NE control area by properly completing a North American  
31 Electric Reliability Council tag from the generator in the adjacent  
32 control area to either a node or zone in the ISO-NE control area;

33 (ii) commits its renewable energy generating source to the ISO-  
34 NE control area as a capacity resource for a period of not less than  
35 5 years beginning on the date the renewable energy generating  
36 source receives qualification from the; and

37 (iii) complies with all ISO-NE rules and regulations required to  
38 schedule and deliver all of the renewable energy generating  
39 source’s energy and capacity into the ISO-NE control area.

40 During any period in which the generator, or any person under  
41 contract with the generator, is delivering renewable energy from  
42 the renewable energy generating source into the ISO-NE control  
43 area, and notwithstanding compliance with the third paragraph,  
44 the renewable energy generated by the renewable energy gener-  
45 ating source that is eligible for the renewable portfolio standard  
46 shall be limited to the lesser of the following:—

47 (i) the renewable energy actually generated by the renewable  
48 energy generating source;

49 (ii) the renewable electricity actually scheduled and delivered  
50 into the ISO-NE control area from the renewable energy gener-  
51 ating source in compliance with subsection (b); or

52 (iii) the renewable energy generating source's capacity rating  
53 adjusted for its outages.

54 The renewable portfolio standard credit applicable to the eli-  
55 gible renewable energy as determined pursuant to the fourth para-  
56 graph shall be reduced by any exports of energy from the ISO-NE  
57 control area made by the person seeking renewable portfolio  
58 credit for such renewable energy, or any affiliate of such person,  
59 or any other person under contract with such person to export  
60 energy from the ISO-NE control area and deliver such energy  
61 directly or indirectly to such person.

62 The department through duly adopted regulations may require  
63 such other requirements as it deems appropriate consistent with  
64 this section.

1 SECTION 24. Section 12 of said Chapter 25A, as appearing in  
2 the 2006 Official Edition, is hereby amended by striking out, in  
3 line 15, the word "energy" and inserting in place thereof the  
4 following words:— telecommunication, utilities and energy.

1 SECTION 25. Section 13 of said Chapter 25A, as so appearing,  
2 is hereby amended by striking out, in lines 10 to 11, the words  
3 "Division of Energy Resources Credit Trust Fund" and inserting  
4 in place thereof the following words:— Department of Clean  
5 Energy Credit Trust Fund.

1 SECTION 26. Said Section 13 of said Chapter 25A, as so  
2 appearing, is hereby further amended by striking out, in line 16,  
3 the words "division of energy resources" and inserting in place  
4 thereof the following words:—department of clean energy.

1 SECTION 27. Said Section 13 of said Chapter 25A, as so  
2 appearing, is hereby further amended by striking out, in line 16  
3 and 17, the word "division" and inserting in place thereof the  
4 following word:—department.

1 SECTION 28. Said Chapter 25A is hereby further amended by  
2 adding the following 5 sections:—

3 Section 14. (a) As used in this section, the following words  
4 shall, unless the context clearly requires otherwise, have the  
5 following meanings:—

6 “Building authority”, the University of Massachusetts Building  
7 Authority, the Southeastern Massachusetts University Building  
8 Authority, the University of Lowell Building Authority or any  
9 other building authority which may be established for similar pur-  
10 poses.

11 “Eligible”, able to meet all requirements for offerors or bidders  
12 set forth in this section and Section 44D of Chapter 149 and not  
13 debarred from bidding under Section 44C of said Chapter 149 or  
14 any other applicable law, and who shall certify that he or she is  
15 able to furnish labor that can work in harmony with all other ele-  
16 ments of labor employed or to be employed on the work.

17 “Governmental body”, a city, town, district, regional school  
18 district, county, or agency, board, commission, authority, depart-  
19 ment or instrumentality of a city, town, district, regional school  
20 district or county, and all other public agencies which are not a  
21 state agency or building authority.

22 “Minor informalities”, minor deviations, insignificant mistakes,  
23 and matters of form rather than substance of the proposal or con-  
24 tract document which can be waived or corrected without preju-  
25 dice to other offerors, potential offerors, or the public agency.

26 “Person”, any natural person, business, partnership, corpora-  
27 tion, union, committee, club, or other organization, entity or group  
28 of individuals.

29 “Public agency”, a department, agency, board, commission,  
30 authority, or other instrumentality of the Commonwealth or polit-  
31 ical subdivision of the Commonwealth or 2 or more subdivisions  
32 thereof.

33 “Responsible”, demonstrably possessing the skill, ability and  
34 integrity necessary to faithfully perform the work called for by a  
35 particular contract, based upon a determination of competent  
36 workmanship and financial soundness in accordance with this  
37 section and Section 44D of Chapter 149.

38 “Responsive offeror”, a person who has submitted a proposal  
39 which conforms in all respects to the requests for proposals.

40 “State agency”, a state agency, board, bureau, department, divi-  
41 sion, section, or commission of the Commonwealth.

42 (b) A public agency may, in the manner provided by this  
43 section, contract for the procurement of energy management serv-  
44 ices. Such contracts may include terms of 10 years or less. Con-  
45 tracts which include cogeneration projects shall have terms of 20  
46 years or less. The public agency shall solicit competitive sealed  
47 proposals through a request for proposals. At least 1 week prior to  
48 soliciting proposals for a contract pursuant to this section, a public  
49 agency shall notify the secretary in writing, in such form and  
50 including such information as the secretary shall prescribe by reg-  
51 ulation, of the agency’s intent to solicit proposals. Such notifica-  
52 tion shall, at a minimum, include a complete copy of the agency’s  
53 request for proposals. An acknowledgment of receipt, in such  
54 form and by including such information as the secretary shall pre-  
55 scribe by regulation, shall be issued to the public agency upon  
56 successful compliance with the requirements of this paragraph.

57 Requests for proposals for an energy management services con-  
58 tract to be entered into on behalf of a state agency or a building  
59 authority, shall be developed jointly by the division of capital  
60 asset management and maintenance and the using agency. Such  
61 proposals shall only be solicited by the division of capital asset  
62 management and maintenance after the commissioner of said divi-  
63 sion has given his prior written approval, and no contract for  
64 energy management services shall be valid unless approved and  
65 signed by said commissioner. Said commissioner may delegate to  
66 state agencies and building authorities the authority to enter into  
67 such contracts with an estimated construction cost of less than  
68 \$200,000. Such delegation shall be in writing from the commis-  
69 sioner to the regulating agency or building authority.

70 The request for proposals published by a public agency under  
71 this section shall include:—

72 (i) the time and date for receipt of proposals and the address of  
73 the office to which the proposals are to be delivered;

74 (ii) a description of the services to be procured, including spe-  
75 cific requirements and all evaluation criteria that will be utilized  
76 by the state agency or building authority; and

77 (iii) proposed contract terms and conditions and an identifica-  
78 tion of such terms and conditions which shall be deemed

79 mandatory and nonnegotiable. The request for proposals may  
80 incorporate documents by reference, provided that the request for  
81 proposals specifies where prospective offerors may obtain the  
82 documents. The public agency shall make copies of the request for  
83 proposals available to all persons on an equal basis. Public notice  
84 of the request for proposals shall conform to the procedures set  
85 forth in subsection (1) of Section 44J of Chapter 149. Proposals  
86 shall be opened publicly, in the presence of 2 or more witnesses,  
87 at the time specified in the request for proposals, and shall be  
88 available for public inspection.

89 The provisions of Sections 44A and 44B and Sections 44E to  
90 44H, inclusive, of Chapter 149 shall not apply to contracts pro-  
91 cured pursuant to this section. The provisions of Section 44D of  
92 said Chapter 149 shall apply as appropriate to proposals submitted  
93 for contracts under this section, and every such proposal shall be  
94 accompanied by:—

95 (i) a copy of a certificate of eligibility issued by the commis-  
96 sioner of the division of capital asset management and mainte-  
97 nance; and

98 (ii) an update statement. The offeror's qualifications shall be  
99 evaluated by the division of capital asset management and mainte-  
100 nance in a manner designated by the commissioner of said divi-  
101 sion. If the public agency determines that any offeror is not  
102 responsible or eligible, the public agency shall reject the offer and  
103 give written notice of such action to the division of capital asset  
104 management and maintenance.

105 State agencies and building authorities shall award contracts  
106 under this section to the lowest offeror demonstrably possessing  
107 the skill, ability, and integrity necessary to perform faithfully  
108 energy management services.

109 Payments under a contract for energy management services  
110 may be based in whole or in part on any cost savings attributable  
111 to a reduction in energy and water consumption due to the con-  
112 tractor's performance or revenues gained due to the contractor's  
113 services which are aimed at energy and water cost savings.

114 (c) The provisions of this subsection shall apply to a govern-  
115 mental body procuring contracts under this section.

116 Unless no other manner of description suffices, and the govern-  
117 mental body so determines in writing, setting forth the basis for



118 the determination, all requirements shall be written in a manner  
119 which describes the requirements to be met without having the  
120 effect of exclusively requiring a proprietary supply or service or a  
121 procurement from a sole source.

122 Subject to a governmental body's authority to reject, in whole  
123 or in part, any and all proposals, as provided in this section, a gov-  
124 ernmental body shall unconditionally accept a proposal without  
125 alternation or correction, except as provided in this paragraph. An  
126 offeror may correct, modify, or withdraw a proposal by written  
127 notice received in the office designated in the request for pro-  
128 posals prior to the time and date set for opening the proposals.  
129 After proposal opening, an offeror may not change any provisions  
130 of the proposal in a manner prejudicial to the interests of the gov-  
131 ernmental body or fair competition. The governmental body shall  
132 waive minor informalities or allow the offeror to correct them. If a  
133 mistake and the intended proposal are clearly evident on the face  
134 of the proposal document, the governmental body shall correct the  
135 mistake to reflect the intended correction and so notify the offeror  
136 in writing, and the offeror may not withdraw the proposal. An  
137 offeror may withdraw a proposal if a mistake is clearly evident on  
138 the face of the proposal but the intended correction is not similarly  
139 evident.

140 The governmental body shall evaluate each proposal and award  
141 each contract based solely on the criteria set forth in the request  
142 for proposals. Such criteria shall include, but not be limited to, all  
143 standards by which the governmental body will evaluate respon-  
144 siveness, responsibility, qualifications of the offeror, technical  
145 merit and cost to the governmental body. The request for pro-  
146 posals shall specify the method for comparing proposals to deter-  
147 mine the proposal offering the lowest overall cost to the  
148 governmental body, taking into consideration comprehensiveness  
149 of services, energy or water cost savings, costs to be paid by the  
150 governmental body and revenues to be paid to the governmental  
151 body. If the governmental body awards the contract to an offeror  
152 who did not submit the proposal offering the lowest overall cost,  
153 the governmental body shall explain the reason for the award in  
154 writing.

155 The evaluations shall specify revision, if needed, to each pro-  
156 posal which should be obtained by negotiation prior to awarding

157 the contract to the offeror of the proposal. The governmental body  
158 may condition an award on successful negotiation of the revisions  
159 specified in the evaluation, and shall explain in writing the rea-  
160 sons for omitting any such revision from a plan incorporated by  
161 reference in the contract.

162 (d) The public agency may cancel a request for proposals, or  
163 may reject in whole or in part any and all proposals when the  
164 public agency determines that cancellation or rejection serves the  
165 best interests of the public agency.

166 The public agency shall state in writing the reason for a cancel-  
167 lation or rejection. The public agency shall promptly publish in  
168 the central register notice of the offeror awarded the contract. The  
169 public agency shall, within 30 days, file a copy thereof with the  
170 secretary.

171 The secretary, in consultations with the commissioner of the  
172 division of capital asset management and maintenance, shall pro-  
173 mulgate regulations for the procurement of energy management  
174 services under this section, provided however, that the commis-  
175 sioner of the division of capital asset management and mainte-  
176 nance shall promulgate regulations for services to be procured for  
177 state agencies and building authorities; and provided, further, that  
178 regulations affecting the operations of housing authorities within  
179 the jurisdiction of the department of housing and community  
180 development shall be promulgated in consultation with the  
181 director of housing and community development. Such regulations  
182 may limit the scope of services procured and the duration of con-  
183 tracts, and shall include any requirements that the secretary or  
184 commissioner of the division of capital asset management and  
185 maintenance deems necessary to promote prudent management of  
186 such contracts at the appropriate facilities. Such regulations shall  
187 require the submission, at least annually, of such information as  
188 the secretary or commissioner of the division of capital asset man-  
189 agement and maintenance may deem necessary in order to monitor  
190 the costs and benefits of contracts for energy management  
191 services.

192 (e) The secretary shall enforce the requirements of this section  
193 and regulations promulgated hereunder as they relate to public  
194 agencies except for state agencies and building authorities and  
195 shall have all the necessary powers to require compliance there-

196 with. The commissioner of the division of capital asset manage-  
197 ment and maintenance shall enforce all such regulations as they  
198 relate to state agencies and building authorities. Any order of the  
199 secretary under this subsection shall be effective and may be  
200 enforced according to its terms, and enforcement thereof shall not  
201 be suspended or stayed by the entry of an appeal. The superior  
202 court for Suffolk County shall have jurisdiction over appeals of  
203 orders of the secretary under this subsection, and shall also have  
204 jurisdiction upon application of said secretary to enforce all orders  
205 of said secretary under this subsection. The burden of proof shall  
206 be upon the appealing party to show that the order of said secre-  
207 tary is invalid. An aggrieved person shall not be required to seek  
208 an order from said secretary as a condition precedent to seeking  
209 any other remedy.

210 Section 15. (a) As used in this section, the following words  
211 shall have the following meanings:—

212 “Eligible”, able to meet all requirements for offerors or bidders  
213 set forth in this section including, without limitation, being certi-  
214 fied by the division of capital asset management and maintenance  
215 as eligible to provide energy management systems services and  
216 not debarred from bidding under Section 44C of Chapter 149 or  
217 any other applicable law.

218 “Energy conservation measures”, measures involving modifica-  
219 tions or maintenance and operating procedures of a building or  
220 facility and installations therein, which are designed to reduce  
221 energy consumption in such building or facility, or the installation  
222 or, modification of an installation in a building or facility which is  
223 primarily intended to reduce energy consumption.

224 “Energy conservation projects”, projects to promote energy  
225 conservation, including but not limited to, energy conserving  
226 modification to windows and doors; caulking and weather-strip-  
227 ping; insulation, automatic energy control systems; hot water  
228 systems; equipment required to operate variable steam, hydraulic  
229 and ventilating systems; plant and distribution system modifica-  
230 tions including replacement of burners, furnaces or boilers;  
231 devices for modifying fuel openings; electrical or mechanical fur-  
232 nace ignition systems; utility plant system conversions; replace-  
233 ment or modification of lighting fixtures; energy recovery  
234 systems; and cogeneration systems.

235 “Energy management services”, a program of services,  
236 including energy audits, energy conservation measures, energy  
237 conservation projects, or a combination thereof, and building  
238 maintenance and financing services, primarily intended to reduce  
239 the cost of energy and water in operating 1 or more buildings,  
240 which may be paid for, in whole or in part, by cost savings attrib-  
241 utable to a reduction in energy and water consumption which  
242 result from the services.

243 “Energy management systems”, the design and installation of  
244 systems or maintenance programs to conserve energy use within a  
245 building, including, without limitation, performance-contracting  
246 energy saving projects; the installation or modification of new and  
247 existing equipment which will reduce energy and water consump-  
248 tion associated with heating, ventilation, and air conditioning  
249 system, lighting system, building envelope, domestic hot water  
250 system, and other energy and water using devices; and the work  
251 associated with monitoring and verifying project savings and the  
252 study or design of the subject work, whether performed directly or  
253 managed through subcontractors.

254 “Energy savings”, a measured reduction in fuel, energy, oper-  
255 ating or maintenance costs resulting from the implementation of 1  
256 or more energy management services when compared with an  
257 established baseline of previous fuel, energy, operating or mainte-  
258 nance costs, including, but not limited to, future capital replace-  
259 ment expenditures avoided as a result of equipment installed or  
260 services performed pursuant to the guaranteed energy savings con-  
261 tract.

262 “Guaranteed energy savings contract”, a contract for the evalu-  
263 ation, recommendation or implementation of 1 or more energy  
264 management services in which payments are based, in whole or in  
265 part, on any energy savings attributable to the contract.

266 “Person”, any natural person, business, partnership, corpora-  
267 tion, union, committee, club or other organization, entity or group  
268 of individuals.

269 “Public agency”, a city, town or district, including a regional  
270 school district, or a combination of 2 or more such cities, towns or  
271 districts, including regional school districts, or a department,  
272 agency, board, commission, authority or other instrumentality of  
273 the Commonwealth.

274 “Qualified provider”, responsible and eligible person able to  
275 meet all requirements set forth in this section, and not debarred  
276 from bidding under Section 44C of Chapter 149 or any other  
277 applicable law and experienced in the design, implementation and  
278 installation of energy savings measures.

279 “Request for qualifications”, a solicitation directed to qualified  
280 providers issued by a public agency to obtain energy management  
281 services pursuant to a guaranteed energy savings contract subject  
282 to this section. The request for qualifications shall include the  
283 following:—

284 (i) the name and address of the public agency;

285 (ii) the name, address, title and phone number of a contact  
286 person;

287 (iii) The date, time and place where qualifications must be  
288 received;

289 (iv) a description of the services to be procured, including a  
290 facility profile with a detailed description of each building  
291 involved and accurate energy consumption data for the most  
292 recent 2 year period, stated objectives for the program, a list of  
293 building improvements to be considered or required and a state-  
294 ment as to whether the proposed improvements will generate suf-  
295 ficient energy savings to fund the full cost of the program;

296 (v) The evaluation criteria for assessing the qualifications;

297 (vi) a statement that the public agency may cancel the request  
298 for qualifications or may reject in whole or in part any and all  
299 energy savings measures when the public agency determines that  
300 cancellation or rejection serves the best interests of the public;

301 (vii) any other stipulations and clarifications the public agency  
302 may require, which shall be clearly identified in the request for  
303 qualifications.

304 “Responsible”, demonstrably possessing the skill, ability and  
305 integrity necessary to faithfully perform the work called for by a  
306 particular contract, based upon a determination of competent  
307 workmanship and financial soundness in accordance with Section  
308 44D of Chapter 149.

309 (b) A public agency may choose to use this section in the pro-  
310 curement of energy management services as an alternative to the  
311 procedures set out in Section 11C. Nothing in this section shall  
312 preclude any such agency from choosing to proceed thereafter

313 under said Section 11C. A public agency may enter into a guaran-  
314 teed energy savings contract in order to achieve energy savings at  
315 facilities in accordance with this section. All energy savings mea-  
316 sures shall comply with current local, state and federal construc-  
317 tion, and environmental codes and regulations. Prior to entering  
318 into a guaranteed energy savings contract, a public agency shall  
319 issue a request for qualifications. Public notice of the request for  
320 qualifications shall conform to the procedures set forth in subsec-  
321 tion (1) of Section 44J of Chapter 149. At least 1 week before  
322 soliciting a request for qualifications for a guaranteed energy sav-  
323 ings contract, a public agency shall notify the commissioner of  
324 energy resources in writing, in a form and including information  
325 as the commissioner of the division of capital asset management  
326 and maintenance shall prescribe by regulation, of the agency's  
327 intent to solicit qualifications. The notification, at a minimum,  
328 shall include a copy of the agency's request for qualifications. An  
329 acknowledgment of receipt, in a form and including information  
330 as the commissioner of the division of capital asset management  
331 and maintenance shall prescribe by regulation, shall be issued by  
332 the commissioner of energy resources to the public agency upon  
333 successful compliance with the requirements of this subsection.  
334 Qualifications shall be opened publicly, in the presence of 2 or  
335 more witnesses, at the time specified in the request for qualifica-  
336 tions, and shall be available for public inspection. The provisions  
337 of Sections 44A and 44B and Sections 44E to 44H, inclusive, of  
338 said Chapter 149 shall not apply to contracts procured pursuant to  
339 this section. Section 44D of said Chapter 149 shall apply as appro-  
340 priate to qualifications submitted for contracts under this section,  
341 and every such qualification shall be accompanied by (1) a copy  
342 of a certificate of eligibility issued by the commissioner of the  
343 division of capital asset management, and (2) by an update state-  
344 ment.

345 The public agency shall evaluate the qualified providers to  
346 determine which best meets the needs of the public agency by  
347 reviewing the following:—

- 348 (i) references of other energy savings contracts performed by  
349 the qualified providers;
- 350 (ii) the certificate of eligibility and update statement provided  
351 by the qualified providers;

352 (iii) the quality of the products proposed;  
353 (iv) the methodology of determining energy savings;  
354 (v) the general reputation and performance capabilities of the  
355 qualified providers;  
356 (vi) substantial conformity with the specifications and other  
357 conditions set forth in the request for qualifications;  
358 (vii) the time specified in the qualifications for the performance  
359 of the contract; and  
360 (viii) any other factors the public agency considers reasonable  
361 and appropriate, which factors shall be made a matter of record.  
362 Respondents shall be evaluated only on the criteria set forth in  
363 the request for qualifications.  
364 The public agency shall conduct discussions with, and may  
365 require public presentations by, each person who submitted quali-  
366 fications in response to the request for qualifications regarding  
367 their qualifications, approach to the project and ability to furnish  
368 the required services. The public agency shall select in order of  
369 preference 3 such persons, unless fewer persons respond, they  
370 consider to be the most highly qualified to perform the required  
371 services. The agency may request, accept and consider proposals  
372 for the compensation to be paid under the contract only during  
373 competitive negotiations conducted pursuant to subsection (f).  
374 (c) The public agency may cancel a request for qualifications,  
375 or may reject in whole or in part any and all proposals when the  
376 public agency determines that cancellation or rejection serves the  
377 best interests of the public agency. The public agency shall state  
378 in writing the reason for a cancellation or rejection.  
379 (d) The public agency shall negotiate a contract with the most  
380 qualified person at compensation which the public agency deter-  
381 mines is fair, competitive and reasonable. Should the public  
382 agency be unable to negotiate a satisfactory contract with the  
383 person considered to be the most qualified at a price the public  
384 agency determines to be fair, competitive and reasonable, negotia-  
385 tions with that person shall be formally terminated. The public  
386 agency shall then undertake negotiations with the second most  
387 qualified person. Failing accord with the second most qualified  
388 person, the public agency shall terminate those negotiations and  
389 then undertake negotiations with the third most qualified person.  
390 Should the public agency be unable to negotiate a satisfactory

391 contract with any of the selected persons, the public agency may  
392 select additional qualified providers who responded to the request  
393 for qualifications, in the order of their competence and qualifica-  
394 tion, and continue negotiations in accordance with this subsection  
395 until either an agreement is reached or the public agency cancels  
396 the request for qualifications.

397 (e) The decision of a public agency as defined by Section 1,  
398 regarding the selection of a qualified provider shall be final and  
399 not subject to appeal except on the grounds of fraud or collusion.

400 (f) The public agency shall provide public notice of the meeting  
401 at which it proposes to award the guaranteed energy savings con-  
402 tract, of the name of the parties to the proposed contract, and of  
403 the purpose of the contract. The public notice shall be made at  
404 least 10 days before the meeting. The public agency shall  
405 promptly publish in the central register notice of the award and  
406 those public agencies other than state agencies and building  
407 authorities shall notify the commissioner of energy resources of  
408 such award and provide a copy of the guaranteed energy savings  
409 contract.

410 (g) The guaranteed energy savings contract shall include a  
411 written guarantee of the qualified provider that either the amount  
412 of energy savings guaranteed will be achieved or the qualified  
413 provider shall reimburse the public agency for the shortfall  
414 amount. Methods for measurement and verification of guaranteed  
415 savings shall conform to the most recent standards established by  
416 the Federal Energy Management Program of the United States  
417 Department of Energy. The secretary shall enforce the require-  
418 ments of this section and regulations promulgated hereunder as  
419 they relate to public agencies except for state agencies and  
420 building authorities and shall have all the necessary powers to  
421 require compliance therewith. The commissioner of the division  
422 of capital asset management and maintenance shall enforce the  
423 regulations as they relate to state agencies and building authori-  
424 ties. Any order of the commissioner of energy resources under this  
425 subsection shall be effective and may be enforced according to its  
426 terms, and enforcement thereof shall not be suspended or stayed  
427 by the entry of an appeal. The superior court for Suffolk County  
428 shall have jurisdiction over appeals of orders of the commissioner  
429 of energy resources under this subsection, and shall also have



430 jurisdiction upon application of the commissioner to enforce all  
431 orders of the commissioner under this subsection. The burden of  
432 proof shall be upon the appealing party to show that the order of  
433 the commissioner is invalid. An aggrieved person shall not be  
434 required to seek an order from the commission as a condition  
435 precedent to seeking any other remedy. The value of guaranteed  
436 savings may represent either all, or part of annual payments at the  
437 discretion of the agency. The guaranteed energy savings contract  
438 term for providing a guarantee, measurement and verification,  
439 maintenance, service and installment or lease payments shall not  
440 exceed 20 years. The division of capital asset management and  
441 maintenance, in concurrence with the state inspector general, shall  
442 promulgate regulations for the procurement of energy manage-  
443 ment services, including establishing safeguards to be included in  
444 guaranteed energy savings contracts. The regulations shall require  
445 the submission, at least annually, of information as the commis-  
446 sion of the division of capital asset management and maintenance  
447 and the state inspector general consider necessary in order to mon-  
448 itor the costs and benefits of contracts for energy management  
449 services.

450 (h) Payments under a contract for energy management services  
451 may be based in whole or in part on any cost savings attributable  
452 to a reduction in energy and water consumption due to the con-  
453 tractor's performance or revenues gained due to the contractor's  
454 services which are aimed at energy and water cost savings.

455 (i) Unless no other manner of description suffices, and the  
456 public agency so determines in writing, setting forth the basis for  
457 the determination, all requirements shall be written in a manner  
458 which describes the requirements to be met without having the  
459 effect of exclusively requiring a proprietary supply or service, or a  
460 procurement from a sole source.

461 (j) Before entering into a guaranteed energy savings contract,  
462 the public agency shall require the qualified provider to file with  
463 the public agency a payment or a performance bond relating to the  
464 installation of energy savings measures, in an amount equal to 100  
465 per cent of the estimated contract value from a surety company  
466 licensed to do business in the Commonwealth and whose name  
467 appears on United States Treasury Department Circular 570.

468 (k) Guaranteed energy savings contracts may extend beyond the  
469 fiscal year in which they become effective.

470 Section 16. There shall be within the department of clean  
471 energy, a division of green communities. The purpose of said divi-  
472 sion is to assist the Commonwealth's municipalities and other  
473 governmental bodies:— reduce energy consumption and costs,  
474 reduce pollution, facilitate the development of renewable and  
475 other clean energy resources, and create local jobs related to the  
476 building of clean energy facilities and the installation of energy-  
477 efficient equipment. The division may also award grants to pro-  
478 vide technical assistance to municipalities qualifying as a green  
479 community pursuant to this section. The director of the division  
480 shall be responsible for the administration and oversight of a  
481 green communities program as established herein, and shall, apply  
482 and disburse monies and revenues of the Massachusetts Renew-  
483 able Energy Trust Fund, established pursuant to Section 22 of  
484 Chapter 21A.

485 (a) In establishing a green community certification, the division  
486 shall consider whether municipalities have undertaken any other  
487 initiatives to reduce energy consumption, promote energy conser-  
488 vation or promote the development of clean energy generating  
489 facilities including, but not limited to, the following:— (i)  
490 entering into long-term contracts, as may be defined by the divi-  
491 sion, for the purchase of clean energy;

492 (ii) establishing an energy use baseline inventory for municipal  
493 buildings, street and traffic lighting and putting in place a compre-  
494 hensive plan to reduce said baseline;

495 (iii) adopting a policy of purchasing only fuel efficient munic-  
496 ipal vehicles whenever such vehicles are commercially available  
497 and practicable;

498 (iv) adopting an ordinance or by-law requiring any new com-  
499 mercial and industrial real estate development projects to mini-  
500 mize the life-cycle cost of the facility by utilizing energy  
501 efficiency, water conservation, or other clean energy technologies;

502 (v) adopting a policy instituting a comprehensive energy educa-  
503 tion program for residential users of electricity; and

504 (vi) aligning local building codes with the state energy effi-  
505 ciency code established pursuant to Chapter 143. The division

506 shall promulgate such regulations as are necessary to implement  
507 this program.

508 (b) The division shall establish a green communities program.  
509 The purpose of said program shall be to provide financial assis-  
510 tance, in the form of grants and loans, to municipalities and other  
511 governmental bodies that qualify as green communities pursuant  
512 to this section, to finance the costs of studying, designing, con-  
513 structing and implementing energy efficiency activities, including  
514 but not limited to, energy conservation measures and projects;  
515 procurement of energy management services; installation of  
516 energy management systems; adoption of demand side reduction  
517 initiatives; adoption of energy efficiency policies; and the siting  
518 and construction of clean energy projects on municipally owned  
519 land. The division may also award grants to provide technical  
520 assistance to municipalities applying to qualify as a green commu-  
521 nity pursuant to this section.

522 (c) In order to qualify as a green community a municipality  
523 shall:—

524 (i) file an application with the division in a form and manner to  
525 be prescribed by the division; and

526 (ii) accept a designation as a qualifying clean energy commu-  
527 nity by the clean energy facility site screening committee and  
528 permit the construction of a minimum of 1 clean energy gener-  
529 ating facility within the community on municipally or privately  
530 owned real property identified by the director as real property  
531 which could potentially be utilized to site clean energy generating  
532 facilities, clean energy research and development facilities, and  
533 clean energy manufacturing facilities pursuant to Section 18;

534 (iii) adopt an expedited application and permitting process pur-  
535 suant to which clean energy generating facilities or clean energy  
536 research and development or manufacturing facilities may be sited  
537 within the municipality; provided, however, that said process shall  
538 not exceed 1 year from the date of initial application to the date of  
539 final approval; provided, further, that in lieu of adopting such an  
540 expedited application and permitting process a municipality may  
541 agree to transfer the right, without recourse to the municipality, to  
542 site clean energy generating facilities within the municipality to  
543 the energy facilities siting board established pursuant to Section  
544 64H of Chapter 164; or

545 (iv) agree to enter into a contract wherein the municipality shall  
546 purchase a fixed percentage of electricity consumed by municipi-  
547 pally owned buildings, street and traffic lights from clean energy  
548 sources; provided, however, that the maximum percentage of  
549 clean energy generation required to satisfy this subsection shall  
550 not exceed 20 per cent of a municipality's total electric load as  
551 determined by the division.

552 (d) In determining the funding priority for municipalities quali-  
553 fying as green communities pursuant to subsection (c), the  
554 director shall consider whether municipalities have undertaken  
555 any other initiatives to reduce energy consumption, promote  
556 energy conservation or promote the development of clean energy  
557 generating facilities including, but not limited to, the following:—

558 (1) entering into long-term contracts, as may defined by the  
559 director, for the purchase of clean energy to satisfy subsection (c);

560 (2) establishing an energy use baseline inventory for municipal  
561 buildings, street and traffic lighting and putting in place a compre-  
562 hensive plan to reduce said baseline;

563 (3) adopting a policy of purchasing only fuel efficient munic-  
564 ipal vehicles whenever such vehicles are commercially available  
565 and practicable;

566 (4) adopting an ordinance or by-law requiring any new com-  
567 mercial and industrial real estate development projects to mini-  
568 mize the life-cycle cost of the facility by utilizing energy  
569 efficiency, water conservation, or other clean energy technologies;

570 (5) adopting a policy instituting a comprehensive energy cur-  
571 riculum for use by the public schools within the municipality;

572 (6) adopting a policy instituting a comprehensive energy educa-  
573 tion program for residential users of electricity; and

574 (7) aligning local building codes with the state energy effi-  
575 ciency code established pursuant to Chapter 143.

576 (e) The division shall establish general policy, guidelines and  
577 standards regarding energy conservation measures and projects;  
578 procurement of energy management services; installation of  
579 energy management systems; adoption of demand side reduction  
580 initiatives; adoption of energy efficiency policies; and the siting  
581 and construction of renewable energy projects on municipally  
582 owned land and shall administer the green communities program  
583 in accordance with this chapter. The director of the division shall

584 be responsible for the administration and oversight of the green  
585 communities program as established herein, and shall, in consulta-  
586 tion with the secretary, apply and disburse monies and revenues of  
587 Massachusetts Renewable Energy Trust, established pursuant to  
588 Section 22 of Chapter 21A, alternative compliance payment  
589 funds, collected pursuant to 225 CMR 14.08(4); and other funds  
590 as proscribed herein.

591 (f) Funding for the green communities program in any 1 fiscal  
592 year shall be:—

593 (1) available from the revenues generated annually by the  
594 Massachusetts Renewable Energy Trust Fund, established pur-  
595 suant to Section 22 of Chapter 21A;

596 (2) up to 100 per cent of the revenues generated annually by the  
597 alternative compliance payment funds, established pursuant to 225  
598 CMR 14.08(4); and

599 (3) other funds as proscribed herein.

600 (g) A municipality or other governmental body served by a  
601 municipal lighting plant exempt from Section 22 of Chapter 21A  
602 and Sections 19 and 20 of Chapter 25, shall not be eligible for  
603 designation as a green community pursuant to this section.

604 (h) The division shall establish rules, regulations and guidelines  
605 for the administration and enforcement of this section, including,  
606 but not limited to, establishing applicant criteria, application  
607 forms and procedures, and energy efficiency product require-  
608 ments.

609 Section 17. The department shall design and implement a com-  
610 petitive bidding procedure for the procurement of electric genera-  
611 tion from clean energy generating facilities on behalf of  
612 municipalities seeking assistance with said procurement pursuant  
613 to Section 16; provided further, that any such competitive bids  
614 received shall include payment options with rates that remain  
615 uniform for a minimum period of 5 years; and provided further,  
616 that in lieu of designing and implementing a competitive bidding  
617 process as required by this section, the director may become a  
618 member of one or more programs organized and administered by  
619 the Massachusetts Health and Educational Facilities Authority or  
620 its subsidiary organization for the purpose of such competitive  
621 group purchasing of electricity.

622 Section 18. There shall be within the department of clean  
623 energy, a clean energy site screening committee. The committee  
624 shall consist of 7 members, the commissioner of the department of  
625 clean energy who shall serve as chair; the secretary of the execu-  
626 tive office of transportation and construction or his designee; the  
627 secretary of the executive office of economic development or his  
628 designee; the secretary of the executive office of energy and envi-  
629 ronmental affairs or his designee; the commissioner of the divi-  
630 sion of capital asset management and maintenance or his  
631 designee; the director of the Massachusetts municipal association  
632 or his designee; and the chair of the board of directors of the  
633 Massachusetts association of regional planning agencies or his  
634 designee.

635 The committee shall develop a statewide list of public and pri-  
636 vate real property which could be utilized to site clean energy  
637 generating facilities, clean energy research and development facil-  
638 ities, and clean energy manufacturing facilities. In determining the  
639 suitability of sites to be included on the statewide list the com-  
640 mittee shall consider, without limitation, the energy capacity  
641 needs of the electric system, development and construction costs,  
642 the proximity of the site to the distribution and transmission  
643 system, the environmental impact of a project, the impact upon  
644 the public use and enjoyment of the potential site, the impact upon  
645 abutters to the potential site, the economic impact upon the host  
646 municipality and the region, and such other matters as the com-  
647 mittee shall deem appropriate; provided, however, that notwith-  
648 standing any local zoning bylaw or ordinance to the contrary, if a  
649 clean energy generating facility other than a waste-to-energy  
650 facility is proposed in any district zoned for industrial use or on  
651 any real property designated and accepted pursuant to this section,  
652 the use shall be allowed as of right, subject to the imposition of  
653 reasonable conditions through a site plan review process.

654 The committee shall annually submit a statewide list of any  
655 public and privately owned real property which could be utilized  
656 to site clean energy generating facilities, clean energy research  
657 and development facilities, and clean energy manufacturing facili-  
658 ties to the secretary of energy and environmental affairs. The sec-  
659 retary shall provide written notification to the host municipality of  
660 any real property within its jurisdiction that has been identified as

661 real property which could potentially be utilized to site clean  
662 energy generating facilities, clean energy research and develop-  
663 ment facilities, and clean energy manufacturing facilities pursuant  
664 to this chapter. Said notice shall be sent to the city manager in the  
665 case of a city under a Plan E form of government, the mayor and  
666 city council in the case of all other cities, the chairman of the  
667 board of selectmen in the case of a town, the county commis-  
668 sioners, the regional planning agency, and the representatives to  
669 the general court representing said host municipality. The secre-  
670 tary shall set forth in such notice a description of the real property,  
671 including the identity of the owners of said real property, and a  
672 declaration that the real property is eligible for designation as a  
673 qualifying clean energy property. The host municipality shall,  
674 within 180 days from receipt of said notification, notify the secre-  
675 tary whether it will accept the designation of the real property as a  
676 qualifying clean energy property. A host municipality which  
677 accepts the designation of at least 1 parcel of real property identi-  
678 fied as real property which could potentially be utilized to site  
679 clean energy generating facilities, clean energy research and  
680 development facilities, and clean energy manufacturing facilities  
681 shall, upon satisfying the requirements of Section 16, qualify as a  
682 green community.

683 The committee shall, on or before December 31, annually  
684 submit a written report of its activities. Said report shall be sub-  
685 mitted to the chair of the senate committee on ways and means,  
686 the chair of the house committee on ways and means, the chairs of  
687 the joint committee on telecommunications, utilities and energy,  
688 and the clerk of the senate and the clerk of the House of Represen-  
689 tatives.

1 SECTION 29. Section 2 of Chapter 25B of the General Laws,  
2 as appearing in the 2006 Official Edition, is hereby amended by  
3 striking out, in line 11, the words “division of energy resources”  
4 and inserting in place thereof the following words:— department  
5 of clean energy.

1 SECTION 30. Section 1 of Chapter 30B of the General Laws,  
2 as appearing in the 2006 Official Edition, is hereby amended by  
3 striking out, in line 97, the words “division of energy resources”

4 and inserting in place thereof the following words:— department  
5 of clean energy.

1 SECTION 31. Section 4E of Chapter 40J is hereby repealed.

1 SECTION 32. Section 1 of Chapter 62 of the General Laws, as  
2 so appearing, is hereby amended by adding the following 2 para-  
3 graphs:—

4 (p) “Alternative fuel vehicle”, a vehicle powered by alternative  
5 fuel and having the following attributes:— the capability of oper-  
6 ating only on an alternative fuel; original use commencing with  
7 the taxpayer; and acquisition by the taxpayer for use or lease, but  
8 not for resale.

9 (q) “Hybrid vehicle”, (i) a vehicle which draws propulsion  
10 energy from onboard sources of stored energy which are both:—  
11 (a) an internal combustion or heat engine using combustible fuel;  
12 and (b) a rechargeable energy storage system; (ii) a vehicle which,  
13 in the case of a passenger automobile, medium duty passenger  
14 vehicle or light truck:— (a) for 2002 and later model vehicles, has  
15 received a certificate of conformity under the Clean Air Act and  
16 meets or exceeds the equivalent qualifying California low emis-  
17 sion vehicle standard under Section 243(e)(2) of the Clean Air Act  
18 for that make and model year; (b) for 2004 and later model vehi-  
19 cles, has received a certificate that the vehicle meets or exceeds  
20 the Bin 5 Tier II emission level established in regulations pre-  
21 scribed by the administrator of the Environmental Protection  
22 Agency under Section 202(i) of the Clean Air Act for that make  
23 and model year vehicle; and (c) and achieves an increase of 10 per  
24 cent fuel efficiency as compared to the average vehicle of its class  
25 as defined by the federal Environmental Protection Agency.

1 SECTION 33. Part B of Section 3 of said Chapter 62, as so  
2 appearing, is hereby amended by inserting after paragraph 9 the  
3 following paragraph:—

4 (9½). For taxable years beginning on January 1, 2008, in the  
5 case of an individual who purchases a hybrid or alternative fuel  
6 vehicle there shall be a deduction in the amount of \$2,000 for a  
7 single person, for a person who qualifies as a head of household  
8 under subsection (b) of Section 2 of Chapter 62 or a married



9 couple in the taxable year in which the purchase is made. The  
10 department of revenue may require a proof of purchase to be sub-  
11 mitted with a return in order to be eligible for the deduction.

1 SECTION 34. Chapter 63 of the General Laws is hereby  
2 amended by inserting after Section 38T following section:—

3 Section 38U. (a) A credit of up to \$300 or 15 per cent,  
4 whichever is less, of the aggregate cost of the purchase and instal-  
5 lation of a solar water heating system shall be allowed per return  
6 against the taxes imposed by this chapter for the cost of the retail  
7 purchase and installation of a solar water heating system in a com-  
8 mercial building.

9 (b) The commissioner of revenue shall promulgate rules and  
10 regulations necessary for the implementation of this section. The  
11 rules and regulations shall include provisions to prevent the gener-  
12 ation of multiple credits with respect to the same property.

13 (c) A credit allowed under this section for the purchase and  
14 installation of a solar water heating system in a commercial  
15 building between November 1, 2008 and March 31, 2009 may be  
16 applied for the taxable year 2008. The taxpayer may carry over  
17 and apply to the tax, in taxable year 2008, the portion of those  
18 credits which exceed the tax for taxable year 2009 subject to regu-  
19 lations by the commissioner of revenue.

1 SECTION 35. Section 221 of Chapter 112 of the General Laws,  
2 as appearing in the 2006 Official Edition, is hereby amended by  
3 inserting after the word “components”, in lines 19 and 20, the  
4 following words:— , as well as home energy score.

1 SECTION 36. Section 94 of Chapter 143 of the General Laws,  
2 as so appearing, is hereby amended by inserting after the word  
3 “ninety-six”, in line 61, the following words:— and including the  
4 energy conservation code.

1 SECTION 37. Said Section 94 of said Chapter 143, as so  
2 appearing, is hereby further amended by adding the following  
3 paragraph:—

4 (m) To adopt, at least once every 3 years, the latest edition of  
5 the model energy conservation code, the International Energy

6 Conservation Code, published by the International Code Council.  
7 No amendments to the Massachusetts energy conservation code  
8 shall be adopted that increase energy consumption in buildings.  
9 The board of building regulations and standards jointly with the  
10 department of clean energy shall adopt regulations to certify and  
11 train qualified energy code inspectors and require that all new  
12 construction and major renovations pass inspections by certified  
13 energy code inspectors demonstrating full compliance with the  
13 Massachusetts energy conservation code.

1 SECTION 38. Section 1 of Chapter 164 of the General Laws,  
2 as so appearing, is hereby amended by inserting after the defini-  
3 tion of “Articles of organization” the following definition:—  
4 “Basic service”, the electricity services provided to a retail  
5 customer upon either (i) the inability of a customer to receive  
6 competitive supply from a supplier pursuant to subsection (d) of  
7 Section 1B, (ii) the failure of the retail customer to elect competi-  
8 tive supply from a supplier pursuant to said subsection (d) of said  
9 Section 1B, or (iii) upon the expiration and the retail customers  
10 failure to renew a competitive supply contract pursuant to said  
11 subsection (d) of said Section 1B or other means.

1 SECTION 39. Said Section 1 of said Chapter 164 of the  
2 General Laws, as so appearing, is hereby further amended by  
3 striking out the definition of “Default Service”.

1 SECTION 40. Said Chapter 164 is hereby further amended by  
2 striking out Section 1 and inserting in place thereof the following  
3 section:—

4 Section 1. As used in this chapter the following words shall,  
5 unless the context otherwise requires, have the following mean-  
6 ings:—

7 “Aggregator”, an entity which groups together electricity cus-  
8 tomers for retail sale purposes, except for public entities, quasi-  
9 public entities or authorities, or subsidiary organizations thereof,  
10 established pursuant to the laws of the Commonwealth.

11 “Alternative energy development”, shall include, but not be  
12 limited to, solar energy; wind; wood; alcohol; hydroelectric; bio-

13 mass energy systems; renewable non-depletable; and recyclable  
14 energy sources.

15 “Alternative energy producer”, any person, firm, partnership,  
16 association, public or private corporation, or any agency, depart-  
17 ment, board, commission or authority of the Commonwealth or of  
18 a subdivision of the Commonwealth, that owns or operates a  
19 cogeneration facility or small power production facility as defined  
20 in this section, and does not engage in the retail sale of electricity  
21 other than sales to customers that are within the confines of an  
22 industrial park, which park existed prior to March first, nineteen  
23 hundred and eighty-two, and in which park there existed as of said  
24 date electrical generating capacity of more than fifteen megawatts.

25 “Alternative energy property”, any property powered in whole  
26 or in part by the sun, wind, water, biomass, alcohol, wood, or any  
27 renewable, non-depletable or recyclable fuel, and property related  
28 to the exploration, development, processing, transportation, and  
29 distribution of the aforementioned energy resources.

30 “Ancillary services”, those functions which support generation,  
31 transmission, and distribution, and shall include the following  
32 services:—

- 33 (1) reactive power/voltage control;
- 34 (2) loss compensation;
- 35 (3) scheduling and dispatch;
- 36 (4) load following;
- 37 (5) system protection service; and
- 38 (6) energy imbalance service.

39 “Articles of organization”, (i) the articles of organization of a  
40 corporation which were filed subsequent to October 1, 1973, (ii)  
41 any agreement of association, special act of incorporation, and  
42 other charter documents, including by-law provisions and stock-  
43 holder votes in effect prior to October 1, 1973,, which, subsequent  
44 to that date, would be included in articles of organization, and all  
45 amendments thereto, effective prior to October 1, 1973, and (iii)  
46 any of the following amendments made or filed from time to time  
47 subsequent to October 1, 1973:—

- 48 (1) a certificate of a vote establishing a series filed pursuant to  
49 Section 26 of Chapter 156B;
- 50 (2) articles of amendment filed pursuant to Section 8B;

51 (3) restated articles of organization filed pursuant to  
52 Section 8C;

53 (4) certificates of confirmation of proceedings filed pursuant to  
54 Section 8D;

55 (5) articles of consolidation or merger filed pursuant to  
56 Section 102A;

57 (6) articles of dissolution filed pursuant to Section 100 of  
58 Chapter 156B;

59 (7) a certificate as to the revival of a corporation filed pursuant  
60 to Section 108 of Chapter 156B.

61 “Clean energy”, products or services that improve operational  
62 performance, productivity or efficiency, while reducing energy  
63 consumption, pollution, waste of natural resources, fossil fuel use  
64 or energy costs.

65 “Cogeneration facility”, any electrical generating unit having a  
66 power production capacity which, together with any other facili-  
67 ties located at the same site, is not greater than thirty megawatts  
68 and which produces electric energy and steam or other form of  
69 useful energy utilized for industrial, commercial, heating or  
70 cooling purposes, and employs a fuel other than oil or gas as its  
71 primary energy source, except that gas may be used if it is pro-  
72 duced from coal, biomass, solid waste, or wood and oil may be  
73 used (1) in combination with coal, in a mixture not exceeding 70  
74 per cent oil, or (2) during any modifications to any existing elec-  
75 trical generating facility undertaken for the purpose of enabling  
76 such facility to employ, except during any periods of maintenance  
77 or repair, a fuel other than oil or gas as its primary energy source.  
78 A cogeneration facility shall also include any electric generating  
79 unit having a power production capacity which, together with any  
80 other facilities located at the same site, is not greater than 30  
81 megawatts and which produces electric energy and steam or other  
82 form of useful energy utilized for industrial, commercial, heating  
83 or cooling purposes that is within the confines of an industrial  
84 park, which park existed prior to March 1, 1982 and, in which  
85 park there existed, as of said date, electrical generating capacity of  
86 more than 15 megawatts, and in which park there existed, since  
87 said date, a cogeneration facility, as defined herein, or a small  
88 power production facility.

89 “Committee”, the clean energy site screening committee estab-  
90 lished pursuant to Section 4.

91 “Contract termination fee”, the fees owed by the distribution  
92 company to its wholesale power supplier, as determined and  
93 approved by the department of public utilities.

94 “Corporation”, a corporation to which this chapter applies, as  
95 set forth in section three.

96 “Default service”, the electricity services provided to a retail  
97 customer upon either the (i) failure of a distribution company or  
98 supplier to provide such electricity services as required by law or  
99 as contracted for under the standard service offer, (ii) the comple-  
100 tion of the term of the standard service offer, or (iii) upon the  
101 inability of a customer to receive standard service transition rates  
102 during the term of the standard service offer pursuant to Section  
103 1B.

104 “Department”, the department of public utilities.

105 “Distributed generation”, a generation facility or renewable  
106 energy facility connected directly to distribution facilities or to  
107 retail customer facilities which alleviate or avoid transmission or  
108 distribution constraints or the installation of new transmission  
109 facilities or distribution facilities.

110 “Distribution”, the delivery of electricity over lines which  
111 operate at a voltage level typically equal to or greater than 110  
112 volts and less than 69,000 volts to an end-use customer within the  
113 Commonwealth. The distribution of electricity shall be subject to  
114 the jurisdiction of the department of public utilities.

115 “Distribution company”, a company engaging in the distribu-  
116 tion of electricity or owning, operating, or controlling distribution  
117 facilities; provided, however, a distribution company shall not  
118 include any entity which owns or operates plant or equipment  
119 used to produce electricity, steam, and chilled water, or any affil-  
120 iate engaged solely in the provision of such electricity, steam, and  
121 chilled water, where the electricity produced by such entity or its  
122 affiliate is primarily for the benefit of hospitals and non-profit  
123 educational institutions, and where such plant or equipment was in  
124 operation prior to January 1, 1986.

125 “Distribution facility”, plant or equipment used for the distrib-  
126 ution of electricity and which is not a transmission facility, a  
127 cogeneration facility, or a small power production facility.

128 “Distribution service”, the delivery of electricity to the cus-  
129 tomer by the electric distribution company from points on the  
130 transmission system or from a generating plant, at distribution  
131 voltage.

132 “Electric company”, a corporation organized under the laws of  
133 the Commonwealth for the purpose of making by means of water  
134 power, steam power or otherwise and selling or transmitting and  
135 selling, or transmitting only, or distributing and selling, or only  
136 distributing, electricity within the Commonwealth, or authorized  
137 by special act so to do, even though subsequently authorized to  
138 make or sell gas; provided, however, that electric company shall  
139 not mean an alternative energy producer; and provided, further,  
140 that a distribution company shall not include any entity which  
141 owns or operates a plant or equipment used to produce electricity,  
142 steam, and chilled water, or any affiliate engaged solely in the  
143 provision of such electricity, steam, and chilled water, where the  
144 electricity produced by such entity or its affiliate is primarily for  
145 the benefit of hospitals and nonprofit educational institutions, and  
146 where such plant or equipment was in operation before January 1,  
147 1986; and provided, further, that electric company shall not mean  
148 a corporation only transmitting and selling, or only transmitting,  
149 electricity unless such corporation is affiliated with an electric  
150 company organized under the laws of the Commonwealth for the  
151 purpose of distributing and selling or distributing only, electricity  
152 within the Commonwealth.

153 “Electric service”, the provision of generation, transmission,  
154 distribution, or ancillary services.

155 “End-user”, any individual, corporation, firm or subsidiary of  
156 any firm that is an ultimate consumer of petroleum products and  
157 which, as part of its normal business practices, purchases or  
158 obtains petroleum products from a wholesaler or reseller and  
159 receives delivery of that product.

160 “Energy audit”, a determination of the energy consumption  
161 characteristics of a building or facility which identifies the type,  
162 size, and rate of energy consumption of such building or facility;  
163 and the major energy using systems of such building or facility;  
164 determines appropriate energy conservation maintenance and  
165 operating procedures; and indicates the need, if any, for the acqui-

166 sition and installation of energy conservation measures or alterna-  
167 tive energy property.

168 “Energy conservation”, shall include, but not be limited to, the  
169 modification of or change in operation of real or personal property  
170 in a manner likely to improve the efficiency of energy use, and  
171 shall include energy conservation measures, and any process to  
172 audit or identify and specify energy and cost savings.

173 “Energy conservation measures”, measures involving modifica-  
174 tions of maintenance and operating procedures of a building or  
175 facility and installations therein, which are designed to reduce  
176 energy consumption in such building or facility, or the installa-  
177 tion, modification of an installation in a building or facility which  
178 is primarily intended to reduce energy consumption.

179 “Energy conservation projects”, projects to promote energy  
180 conservation, including but not limited to energy conserving mod-  
181 ification to windows and doors; caulking and weather stripping;  
182 combined heat and power facilities; insulation, automatic energy  
183 control systems; hot water systems; equipment required to operate  
184 variable steam, hydraulic, and ventilating systems; plant and dis-  
185 tribution system modifications including replacement of burners,  
186 furnaces or boilers; devices for modifying fuel openings; elec-  
187 trical or mechanical furnace ignition systems; utility plant system  
188 conversions; replacement or modification of lighting fixtures;  
189 energy recovery systems; and, cogeneration systems.

190 “Energy efficiency”, the implementation of an action, policy,  
191 or measure which entails the application of the least amount of  
192 energy required to produce a desired or given output.

193 “Energy management services”, a program of services,  
194 including energy audits, energy conservation measures, energy  
195 conservation projects, or a combination thereof, and building  
196 maintenance and financing services, primarily intended to reduce  
197 the cost of energy and water in operating one or more buildings,  
198 which may be paid for in whole or in part, by cost savings  
199 attributable to a reduction in energy and water consumption which  
200 result from such services.

201 “FERC”, the federal energy regulatory commission.

202 “Gas company”, a corporation organized for the purpose of  
203 making and selling, or distributing and selling, gas within the  
204 Commonwealth, even though subsequently authorized to make or

205 sell electricity; provided, however, that gas company shall not  
206 mean an alternative energy producer.

207 “Generation”, the act or process of transforming other forms of  
208 energy into electric energy, or the amount of electric energy so  
209 produced.

210 “Generation company”, a company engaged in the business of  
211 producing, manufacturing, or generating electricity or related  
212 services or products including, but not limited to, renewable  
213 energy generation attributes for retail sale to the public.

214 “Generation facility”, plant or equipment used to produce,  
215 manufacture, or otherwise generate electricity and which is not a  
216 transmission facility.

217 “Generation service”, the provision of generation and related  
218 services to a customer.

219 “Green Building”, buildings, including but not limited to,  
220 homes, offices, schools, and hospitals constructed or renovated to  
221 incorporate design techniques, technologies, and materials that  
222 lessen its dependence on fossil fuels and minimize its overall neg-  
223 ative environmental impact.

224 “Horizontal market power”, a situation in which one or a few  
225 market participants combined have undue concentration in the  
226 ownership of facilities at the same level in the chain of production  
227 resulting in the ability to influence price to his or their own ben-  
228 efit.

229 “Mitigation”, all actions or occurrences which reduce the  
230 amount of money that a distribution company seeks to collect  
231 through the transition charge, including those amounts resulting  
232 from both matters within the company’s control and from matters  
233 not wholly within the company’s control. Mitigation shall, in  
234 accordance with the provisions of Section 1G, include, but not be  
235 limited to, the following:—

236 (1) sales of capacity, energy, ancillary services, reserves, and  
237 emission allowances from generating facilities that are wholly or  
238 partly owned by the company;



239 (2) sales of capacity, energy, ancillary services, reserves, and  
240 emission allowances from generating facilities with which the  
241 company has a power purchase agreement;

242 (3) adjustments to the company's minimum obligations under  
243 purchase power agreements that decrease such obligations, such  
244 as those that may be obtained through contract buy-out or renegoti-  
245 ation;

246 (4) residual value;

247 (5) sales and voluntary write downs of company generation-  
248 related assets;

249 (6) any market value in excess of net book value associated  
250 with the sale, lease, transfer, or other use of the assets of the com-  
251 pany unrelated to the provision of transmission service or distribu-  
252 tion service at regulated prices, including, but not limited to,  
253 rights-of-way, property, and intangible assets when the costs asso-  
254 ciated with the acquisition of those assets have been reflected in  
255 the company's rates for regulated service; provided, however, that  
256 the department of public utilities shall determine their market  
257 values based on the highest prices that such assets could reason-  
258 ably realize after an open and competitive sale; and

259 (7) any allowed refinancing of stranded assets or other debt  
260 obligations as provided by law.

261 "Non-renewable energy supply and resource development",  
262 shall include, but not be limited to, gasoline, natural gas, coal,  
263 nuclear energy, petroleum both offshore and onshore, and facili-  
264 ties related to the exploration, development, processing, trans-  
265 portation, and distribution of such resources and programs  
266 established for the allocation of supplies of such resources and the  
267 development of supply shortage contingency plans.

268 "Petroleum products", propane, gasoline, unleaded gasoline,  
269 kerosene, #2 heating oil, diesel fuel, kerosene base jet fuel, and  
270 #4, 5, and 6 residual oil for utility and non-utility uses, and all  
271 petroleum derivatives, whether in bond or not, which are  
272 commonly burned to produce heat, power, electricity, or motion or  
273 which are commonly processed to produce synthetic gas for  
274 burning.

275 "Primary energy source", the fuel or fuels used, except during  
276 periods of maintenance or repair, for the generation of electric  
277 energy, except that such term does not include the minimum

278 amounts of fuel required for ignition, start-up, testing, flame stabi-  
279 lization, and control uses, and minimum amounts of fuel required  
280 to alleviate or prevent unanticipated equipment outages and emer-  
281 gencies declared by the governor, directly affecting the public  
282 health, safety, and welfare which would result from electric power  
283 outages.

284 “Renewable energy” or “renewables”, either (i) resources  
285 whose common characteristic is that they are nondepletable or are  
286 naturally replenishable but flow-limited, or (ii) existing or  
287 emerging non-fossil fuel energy sources or technologies, which  
288 have significant potential for commercialization in New England  
289 and New York, and shall include the following:— solar photo-  
290 voltaic or solar thermal electric energy; wind energy; ocean  
291 thermal, wave, or tidal energy; geothermal; fuel cells; landfill gas;  
292 waste-to-energy which is a component of conventional municipal  
293 solid waste plant technology in commercial use; naturally flowing  
294 water and hydroelectric; and low-emission, advanced biomass  
295 power conversion technologies, such as gasification using such  
296 biomass fuels as wood, agricultural, or food wastes, energy crops,  
297 biogas, biodiesel, or organic refuse-derived fuel. The following  
298 technologies or fuels shall not be considered renewable energy  
299 supplies:— coal, oil, natural gas except when used in fuel cells,  
300 and nuclear power.

301 “Reseller”, any person, corporation, firm or subsidiary of any  
302 firm that carries on the trade or business of purchasing petroleum  
303 products and reselling them without substantially changing their  
304 form, or any wholesaler or retail seller of electricity or natural  
305 gas.

306 “Residual value”, the value of electric company assets, not  
307 including the income which may be obtained through generation  
308 facility operation.

309 “Retail access”, the use of transmission and distribution facili-  
310 ties owned by a transmission company or a distribution company  
311 to transmit or distribute electricity from a generation company,  
312 supplier, or aggregator to retail customers.

313 “Retail customer”, a customer who purchases electricity for its  
314 own consumption.

315 “Securitization”, the use of rate reduction bonds to refinance  
316 debt and equity associated with transition costs pursuant to  
317 Section 1H.

318 “Service territory”, the geographic area in which a distribution  
319 company provided distribution service on July 1, 1997.

320 “Small power production facility”, a facility which is any elec-  
321 trical generating unit which produces electric energy solely by the  
322 use, as a primary energy source, of biomass, waste, wind, water,  
323 wood, geothermal, solar energy, or any combination thereof, or  
324 produces gas if it is produced from coal, biomass, solid waste or  
325 wood, and has a power production capacity which, together with  
326 any other facilities located at the same site is not greater than 30  
327 megawatts.

328 “Steam distribution company,” any person, firm, partnership,  
329 association or private corporation organized under the laws of the  
330 Commonwealth for the purpose of operating any plant or equip-  
331 ment or facilities for the manufacture, production, transmission,  
332 furnishing or distribution of steam to or for the public for compen-  
333 sation within the Commonwealth, and provided further, that steam  
334 distribution company shall not mean an entity producing or dis-  
335 tributing steam exclusively on private property and solely for the  
336 entity’s use or the use of the entity’s tenant, and not for distribu-  
337 tion or sale.

338 “Supplier”, any supplier of generation service to retail cus-  
339 tomers, including power marketers, brokers, and marketing affili-  
340 ates of distribution companies, except that no electric company  
341 shall be considered a supplier.

342 “Supplying electricity in bulk”, engaging in the business of  
343 making and selling or distributing and selling electricity to elec-  
344 tric companies, railroads, street railways or electric railroads, or to  
345 municipalities for municipal use or re-sale to their inhabitants, or  
346 to persons, associations or corporations under limitations imposed  
347 by special law or under Section 90 or corresponding provisions of  
348 earlier laws.

349 “Transition charge”, the charge that provides the mechanism  
350 for recovery of an electric company’s transition costs.

351 “Transition costs”, the embedded costs as determined pursuant  
352 to Section 1H which remain after accounting for maximum pos-

353 sible mitigation, subject to determination by the department of  
354 public utilities.

355 “Transmission”, the delivery of power over lines that operate at  
356 a voltage level typically equal to or greater than 69,000 volts from  
357 generating facilities across interconnected high voltage lines to  
358 where it enters a distribution system.

359 “Transmission company”, a company engaging in the transmis-  
360 sion of electricity or owning, operating, or controlling transmis-  
361 sion facilities. A transmission company shall provide transmission  
362 service to all generation companies, municipal lighting plants,  
363 suppliers, and load aggregators in the Commonwealth, whether  
364 affiliated or not, on comparable, nondiscriminatory prices and  
365 terms, pursuant to provisions of federal law and regulation.

366 “Transmission facility”, plant or equipment used for the trans-  
367 mission of electricity, as determined by the federal energy regula-  
368 tory commission pursuant to federal law and regulation.

369 “Transmission service”, the delivery of electricity to a retail  
370 customer, supplier, distribution company, or wholesale customer  
371 by a transmission company.

372 “Unbundled rates”, rates designed to separate the costs of pro-  
373 viding generation, the costs of transmission and distribution serv-  
374 ices, and transition and general access charges.

375 “Vertical market power”, a situation in which one or a few  
376 market participants, having joint ownership of facilities at dif-  
377 fering levels of the chain of production, such as generation, trans-  
378 mission, and distribution, possess the ability to use such joint  
379 ownership to influence price to the participants’ own benefit.

380 “Wholesaler”, any person, corporation, firm or any part or sub-  
381 sidiary of any firm which supplies, sells, transfers, or otherwise  
382 furnishes petroleum products to resellers or end-users.

383 “Wholesale generation company”, a company engaged in the  
384 business of producing, manufacturing, or generating electricity for  
385 sale at wholesale only.

1 SECTION 41. Section 1E of said Chapter 164, as so appearing,  
2 is hereby amended by striking out subsection (c) and inserting in  
3 place thereof the following subsection:—

4 (c) Each distribution, transmission, and gas company shall file  
5 a report with the department by March 1 of each year comparing

6 its performance during the previous calendar year to the depart-  
7 ment's service quality standards and any applicable national stan-  
8 dards as may be adopted by the department. The department shall  
9 be authorized to levy a penalty against any distribution, transmis-  
10 sion, or gas company which fails to meet the service quality stan-  
11 dards in an amount up to and including the equivalent of 4 per  
12 cent of such company's transmission and distribution service for  
13 the previous calendar year.

1 SECTION 42. Section 1F of said Chapter 164, as so appearing,  
2 is hereby amended by striking out, in line 90, the words "division  
3 of energy resources" and inserting in place thereof the following  
4 words:— department of clean energy.

1 SECTION 43. Subparagraph (i) of paragraph (4) of Section 1F  
2 of said Chapter 164, as so appearing, is hereby amended by  
3 striking out the second, third and fourth paragraphs.

1 SECTION 44. Said Section 1F of said Chapter 164, as so  
2 appearing, is hereby further amended by striking out subparagraph  
3 (ii).

1 SECTION 45. Said Section 1F of said Chapter 164, as so  
2 appearing, is hereby further amended by striking out subparagraph  
3 (iii) and inserting in place thereof the following subparagraph:—  
4 (iii) A residential customer eligible for low-income discount  
5 rates shall receive the service on demand. Each distribution com-  
6 pany shall periodically notify all customers of the availability of  
7 and method of obtaining low-income discount rates. An existing  
8 residential customer eligible for low-income discount on the date  
9 of start of retail access who orders service for the first time from a  
10 distribution company shall be offered standard basic service by  
11 that distribution company.

1 SECTION 46. Section 1G of said Chapter 164, as so appearing,  
2 is hereby amended by striking out, in lines 366 and 367, the words  
3 "government regulations" and inserting in place thereof the  
4 following words:— telecommunications, utilities and energy.

1 SECTION 47. Section 69G of said Chapter 164, as so  
2 appearing, is hereby amended by inserting after the definition of  
3 “Board” the following definition:—

4 “Clean energy generating unit”, any bulk electric generating  
5 unit, including associated buildings and structures and electric  
6 transmission lines, operating at a gross capacity of 1 megawatt or  
7 more, which generates all of its electricity from 1 or more of the  
8 following sources:— solar photovoltaic and solar thermal energy;  
9 wind energy; geothermal energy; ocean thermal, wave, or tidal  
10 energy; fuel cells; landfill gas; naturally flowing water and hydro-  
11 electric; low emission advanced biomass power conversion tech-  
12 nologies using such biomass fuels as wood, agricultural, or food  
13 wastes, energy crops, biogas, biodiesel, or organic refuse-derived  
14 fuel storage and conversion technologies connected to qualifying  
15 generation projects, as well as combined heat and power facilities  
16 which burn only natural gas; and such other types of facilities as  
17 the secretary of the executive office of energy and environmental  
18 affairs may from time to time designate.

1 SECTION 48. Said Section 69G of said Chapter 164, as so  
2 appearing, is hereby further amended by striking out the definition  
3 of “Generating facility” and inserting in place thereof the  
4 following definition:—

5 “Generating facility”, a clean energy generating unit located in  
6 a municipality which has transferred its authority to permit the  
7 siting of clean energy generating units within the municipality to  
8 the board pursuant to Section 16 of Chapter 25A and any gener-  
9 ating unit designed for or capable of operating at a gross capacity  
10 of 100 megawatts or more, including associated buildings, ancil-  
11 lary structures, transmission and pipeline interconnections that are  
12 not otherwise facilities, and fuel storage facilities.

1 SECTION 49. Section 69H of said Chapter 164, as so  
2 appearing, is hereby amended by striking out, in line 18, the  
3 words “division of energy resources” and inserting in place  
4 thereof the following words:— department of clean energy.

1 SECTION 50. Section 76D of said Chapter 164, as so  
2 appearing, is hereby amended by inserting after the word “compa-

3 nies”, in lines 1 to 2, line 14 , the third time it appears, and in line  
4 20, the second time it appears, in each instance, the following  
5 words:— ,steam distribution companies.

1 SECTION 51. Said Section 76D of said Chapter 164, as so  
2 appearing, is hereby further amended by inserting after the word  
3 “company”, in line 9, the following words:— ,steam distribution  
4 company.

1 SECTION 52. Said Chapter 164 is hereby further amended by  
2 inserting after Section 76D the following section:—

3 Section 76E. The department shall adopt inspection, mainte-  
4 nance, repair, and replacement standards for the distribution sys-  
5 tems of investor-owned electric and gas utilities doing business in  
6 the Commonwealth no later than June 1, 2008. Said standards,  
7 which shall be performance or prescriptive standards, or both, as  
8 appropriate, for each substantial type of distribution equipment or  
9 facility, shall provide for inspection cycles for all overhead and  
10 underground facilities and shall establish a criteria for mainte-  
11 nance and replacement of said facilities to minimize or prevent  
12 service interruptions and to ensure high quality, safe and reliable  
13 service. In establishing the standards required by this section, the  
14 department shall consider cost, local geography and weather,  
15 applicable codes, national electric industry practices, sound engi-  
16 neering judgment, and experience. The department shall require  
17 each utility to maintain detailed records on its inspection and  
18 maintenance activities and to submit annual compliance reports to  
19 the department.

20 The department shall conduct an annual review to determine  
21 whether the standards established pursuant to this section have  
22 been satisfied. If the department finds that the standards have not  
23 been satisfied, the department may order appropriate sanctions,  
24 including penalties in the form of rate reductions or monetary  
25 fines.

1 SECTION 53. Said Chapter 164 is hereby further amended by  
2 striking out Section 96, as appearing in the 2006 Official Edition,  
3 and inserting in place thereof the following section:—

4 Section 96. Companies subject to this chapter and their holding  
5 companies may, notwithstanding any other provisions of this  
6 chapter or of any general or special law, consolidate or merge with  
7 1 another, or may sell and convey their properties to another of  
8 such companies or to a wholesale generation company and such  
9 other company may purchase such properties, provided that such  
10 purchase, sale, consolidation or merger, and the terms thereof,  
11 have been approved, at meetings called therefore, by vote of the  
12 holders of at least two thirds of each class of stock outstanding  
13 and entitled to vote on the question of each of the contracting  
14 companies, and that the department, after notice and a public  
15 hearing, has determined that such purchase and sale or consolida-  
16 tion or merger, and the terms thereof, are consistent with the  
17 public interest; provided, however, that in making such a determi-  
18 nation the department shall at a minimum consider:— proposed  
19 rate changes, if any; the long term strategies that will assure a reli-  
20 able, cost effective energy delivery system; any anticipated inter-  
21 ruptions in service; or other factors which may negatively impact  
22 customer service; and provided, further, that the purchase or sale  
23 of properties by, or the consolidation or merger of, wholesale gen-  
24 eration companies shall not require departmental approval.

1 SECTION 54. Said Chapter 164 is hereby further amended by  
2 striking out Section 115A, as so appearing, and inserting in place  
3 thereof the following section:—

4 Section 115A. (a) Each meter for measuring gas provided to a  
5 consumer by a gas company, or municipal lighting plant shall, not  
6 later than 7 years from the date of installation or replacement, be  
7 removed by said company or municipal lighting plant from the  
8 premises of the consumer and replaced with such a meter which  
9 has been newly tested, sealed and stamped in accordance with  
10 law. (b) Any gas company or municipal lighting plant which vio-  
11 lates any provision of this section, unless in the opinion of the  
12 department such violation is due to unavoidable cause, accident or  
13 lack of materials, shall forfeit \$50 for each meter which is not  
14 removed and replaced as provided herein. Forfeitures incurred  
15 under this section shall not be included as expenses in connection  
16 with the establishment of rates by said companies. The department



17 may promulgate rules and regulations for the administration and  
18 enforcement of this section.

1 SECTION 55. Section 116B of said Chapter 164, as so  
2 appearing, is hereby amended by adding the following para-  
3 graph:—

4 Any gas company found by the department to have knowingly  
5 violated this section shall be subject to a fine of not less than \$500  
6 nor more than \$1,000 for each violation. Penalties and fees  
7 incurred under this section shall not be included as expenses in  
8 connection with the establishment of rates by said company.

1 SECTION 56. Section 134 of said Chapter 164, as so  
2 appearing, is hereby amended by striking out, in lines 31, 51 and  
3 75, the words “division of energy resources” and inserting in place  
4 thereof, in each instance, the following words:— department of  
5 clean energy.

1 SECTION 57. Said Section 134 of said Chapter 164, as so  
2 appearing, is hereby further amended by striking out, in lines 45,  
3 49, 56, 64, and in line 74, the words “standard offer” and inserting  
4 in place thereof, in each instance, the following words:— basic  
5 service

1 SECTION 58. Said Chapter 164 is hereby further amended by  
2 adding the following 5 sections:—

3 Section 138. As used in Sections 138 to 140, inclusive, the  
4 following words shall, unless the context otherwise requires, have  
5 the following meanings:—

6 “Class I net metering credit”, a credit equal to the excess kilo-  
7 watt-hours by time of use billing period (if applicable) multiplied  
8 by the sum of the distribution company’s (i) default service kilo-  
9 watt-hour charge in the ISO-NE load zone where the customer is  
10 located, (ii) distribution kilowatt-hour charge, (iii) transmission  
11 kilowatt-hour charge, and (iv) transition kilowatt-hour charge.  
12 This shall not include the demand-side management and renew-  
13 able energy kilowatt-hour charges set forth in Sections 19 and 20  
14 of Chapter 25. The credit for a Class I net metering facility not

15 using solar or wind as its energy source will be the average  
16 monthly clearing price at the ISO-NE.

17 “Class I net metering facility”, any plant or equipment that is  
18 used to produce, manufacture, or otherwise generate electricity  
19 and that is not a transmission facility and that has a design  
20 capacity of 60 kilowatts or less.

21 “Class II net metering credit”, a credit equal to the excess kilo-  
22 watt-hours by time of use billing period (if applicable) multiplied  
23 by the sum of the distribution company’s (i) default service kilo-  
24 watt-hour charge in the ISO-NE load zone where the customer is  
25 located, (ii) distribution kilowatt-hour charge, (iii) transmission  
26 kilowatt-hour charge, (iv) transition kilowatt-hour charge. This  
27 does not include the demand-side management and renewable  
28 energy kilowatt-hour charges.

29 “Class II net metering facility”, a Solar-net-metering facility or  
30 wind-net-metering facility that has a generating capacity of more  
31 than 60 kilowatts and not more than 1 megawatt.

32 “Class III net metering credit”, a credit equal to the excess kilo-  
33 watt-hours by time of use billing period (if applicable) multiplied  
34 by the (i) distribution company’s default service kilowatt-hour  
35 charge in the ISO-NE load zone where the Customer is located,  
36 (ii) transmission kilowatt-hour charge, and (iii) transition kilo-  
37 watt-hour charge. This does not include the demand-side manage-  
38 ment and renewable energy kilowatt-hour charges set forth in  
39 Sections 19 and 20 of Chapter 25.

40 “Class III net metering facility”, a solar-net-metering or wind-  
41 net-metering facility with a generating capacity of more than 1  
42 megawatt but less than or equal to 2 megawatts.

43 “Customer”, a customer of a distribution company that is enti-  
44 tled to the net metering credits and includes the net metering  
45 facility itself.

46 “ISO-NE,” the independent system operator – New England.

47 “Neighborhood”, a geographic area including and limited to a  
48 unique community of interests that is recognized as such by resi-  
49 dents of such area and which in addition to residential and unde-  
50 veloped properties may encompass commercial properties.

51 “Neighborhood net metering facility”, a Class I, II, or III net  
52 metering facility that:— (a) is owned by a group of 10 or more  
53 residential customers that reside in a single neighborhood and are

54 served by a single distribution company; and (b) is located within  
55 the same neighborhood as the customers that own the facility.

56 “Neighborhood net metering credit”, a credit equal to the  
57 excess kilowatt-hours by time of use billing period, if applicable,  
58 multiplied by the (i) distribution company’s default service kilo-  
59 watt-hour charge in the ISO-NE load zone where the customer is  
60 located, (ii) transmission kilowatt-hour charge, and (iii) transition  
61 kilowatt-hour charge. This shall not include the demand-side man-  
62 agement and renewable energy kilowatt-hour charges set forth in  
63 Sections 19 and 20 of Chapter 25.

64 “Net metering”, the process of measuring the difference  
65 between electricity delivered by a distribution company and elec-  
66 tricity generated by a Class I, Class II, Class III, or neighborhood  
67 net metering facility and fed back to the distribution company.

68 “Solar net metering facility”, a facility for the production of  
69 electrical energy that uses sunlight to generate electricity and is  
70 interconnected to a distribution company.

71 “Wind net metering facility”, a facility for the production of  
72 electrical energy that uses wind to generate electricity and is inter-  
73 connected to a distribution company.

74 Section 139. (a) A distribution company customer that uses  
75 electricity generated by a Class I or Class II net metering facility  
76 may elect net metering as follows:—

77 (1) If the electricity generated by the Class I or Class II net  
78 metering facility during a billing period exceeds the customer’s  
79 kilowatt-hour usage during the billing period, the customer shall  
80 be billed for 0 kilowatt-hour usage and the excess Class I or Class  
81 II net metering credits shall be credited to the customer’s account.  
82 Credits may be carried forward from month to month. A Class I or  
83 Class II Wind or solar net metering facility may designate one or  
84 more customers that are customers of the same distribution com-  
85 pany to which the Class I or Class II wind or solar net metering  
86 facility is interconnected and located in the same ISO-NE load  
87 zone to receive such credits in amounts attributed by the Class I or  
88 Class II wind or solar net metering facility. Written notice of the  
89 identity of the customers so designated and the amounts of the  
90 credits to be attributed to such customers shall be in a form as the  
91 distribution company shall reasonably require.

92 (2) If the customer's kilowatt-hour usage exceeds the electricity  
93 generated by the Class I or Class II net metering facility during  
94 the billing period, the customer shall be responsible for the bal-  
95 ance at the distribution company's applicable rate.

96 (b) A distribution company customer that uses electricity gener-  
97 ated by a Class III net metering facility may elect net metering as  
98 follows:—

99 (1) If the electricity generated by the Class III net metering  
100 during a billing period exceeds the customer's kilowatt-hour  
101 usage during the billing period, the customer shall be billed for 0  
102 kilowatt-hour usage and the excess Class III net metering credits  
103 shall be credited to the customer's account. Credits may be carried  
104 forward from month to month. A Class III wind or solar net  
105 metering facility may designate 1 or more customers that are cus-  
106 tomers of the same distribution company to which the Class III  
107 wind or solar net metering facility is interconnected and are  
108 located in the same ISO-NE load zone to receive such credits in  
109 amounts attributed to such customers by the Class III wind or  
110 solar net metering facility. Written notice of the identity of the  
111 customers so designated and the amounts of the credits to be  
112 attributed to such customers shall be in a form as the distribution  
113 company shall reasonably require.

114 (2) If the customer's kilowatt-hour usage exceeds the electricity  
115 generated by the Class III net metering facility during the billing  
116 period, the customer shall be responsible for the balance at the  
117 distribution company's applicable rate.

118 (c) The distribution portion of any Class I, Class II, or Class III  
119 net metering credits and distribution company delivery charges  
120 displaced by a Class I, Class II, or Class III net metering facility  
121 shall be aggregated by the distribution company and billed to all  
122 customers on an annual basis through a uniform per kilowatt-hour  
123 surcharge or surcharges.

124 (d) The distribution company shall have 1 or more tariffs, as  
125 approved or as may be approved from time to time by the depart-  
126 ment, regarding necessary interconnection studies and the type,  
127 costs, and timeframe for installing metering and distribution  
128 system upgrades to accommodate these installations. Such tariffs  
129 shall require that all facilities maintain adequate insurance as  
130 required under the tariffs. Distribution companies shall be prohib-

131 ited from imposing special fees on Class I net metering facilities,  
132 such as backup charges and demand charges, or additional con-  
133 trols, or liability insurance, as long as the facility meets the other  
134 requirements of the interconnection tariff and all relevant safety  
135 and power quality standards.

136 Prior to providing net metering service under this section, a  
137 Class II or III net metering facility shall provide all necessary  
138 information to and cooperate with the distribution utility to which  
139 it is interconnected to enable the distribution utility to obtain the  
140 appropriate asset identification for reporting generation to ISO-  
141 NE.

142 (e) A Class I, II or III net metering facility shall not be an  
143 “electric utility,” “generation company,” “aggregator,” “supplier,”  
144 “energy marketer” or “energy broker” within the meaning of those  
145 terms as defined in Sections 1 and 1F.

146 (f) The aggregate capacity of net metering shall not exceed 1  
147 per cent of the distribution company’s peak load. For the purpose  
148 of calculating the aggregate capacity, the capacity of a Solar net  
149 metering facility shall be eighty per cent of the facility’s direct  
150 current rating at standard test conditions and the capacity of a  
151 Wind net metering facility shall be the nameplate rating.

152 Section 140. A neighborhood net metering facility shall elect  
153 net metering as follows:—

154 (a) If the electricity generated by the neighborhood net  
155 metering facility during a billing period exceeds its kilowatt-hour  
156 usage during the billing period, the neighborhood net metering  
157 facility shall be billed for 0 kilowatt-hour usage and the excess  
158 neighborhood net metering credits shall be credited to those cus-  
159 tomers identified by the neighborhood net metering facility as  
160 being served by the same company to which the neighborhood net  
161 metering facility is interconnected, residing in the same neighbor-  
162 hood in which is neighborhood net metering facility is located,  
163 and have an ownership interest in the neighborhood net metering  
164 facility. The amount of the excess neighborhood net metering  
165 credits to be attributed to each such customer shall be determined  
166 by the allocation provided by the neighborhood net metering  
167 facility. Credits may be carried forward by such customers from  
168 month to month. Written notice of the identity of the customers so  
169 designated and the allocation of the credits to be attributed to such

170 customers shall be in such form as the distribution company shall  
171 reasonably require.

172 (b) The department shall promulgate rules and regulations nec-  
173 essary to carry out this section, including, but not limited to, fur-  
174 ther definition of the term “neighborhood” and limitations on the  
175 number of customers that may be designated by neighborhood net  
176 metering facilities to receive neighborhood net metering credits.

177 Section 141. In all decisions or actions regarding rate designs,  
178 the department shall consider the impacts of such actions  
179 including new financial incentives on the successful development  
180 of energy efficiency and on-site generation. Where the scale of  
181 on-site generation would have an impact on affordability for low-  
182 income customers, a fully compensating adjustment shall be made  
183 to the low-income rate discount.

184 Section 142. The department shall continue to remove any  
185 impediments to the development of efficient, low-emissions dis-  
186 tributed generation, including combined heat and power, taking  
187 into account the need to appropriately allocate any associated  
188 costs in a fair and equitable manner. For the purposes of this  
189 section, “efficient, low-emissions” shall mean an efficiency of 60  
190 per cent or greater on an annual basis and emissions lower than  
191 required by the department of environmental protection.

1 SECTION 59. The General Laws are hereby further amended  
2 by inserting after Chapter 164A the following chapter:—

3

**Chapter 164B.**

4

**REGULATION OF STEAM DISTRIBUTION COMPANIES.**

5 Section 1. The department shall have supervision of facilities  
6 operated by steam distribution companies for the sole purpose of  
7 ensuring public safety and shall establish reasonable rules and  
8 regulations pertaining to the construction and operation of steam  
9 distribution facilities and equipment used in manufacturing and  
10 transporting steam. The department shall keep itself informed as  
11 to the methods, practices, and condition of all facilities and equip-  
12 ment associated with the distribution of steam, including ducts  
13 and conduits, and shall make such examinations and investiga-  
14 tions of the steam distribution system as necessary, including the

15 adequacy of operation, maintenance and capital improvements to  
16 insure safe operation of facilities operated by a steam distribution  
17 company.

18 Section 2. Each steam distribution company shall file a certified  
19 copy of its certificate of incorporation and bylaws with the depart-  
20 ment. By March first of each year each company shall file a report  
21 on safety related matters as the department may specify, including  
22 but not limited to number, duration and causes of all steam  
23 leakage incidents, distribution system accidents and service out-  
24 ages, time elapsed between the incident and the return to service  
25 following a repair. The department is authorized to levy fines or  
26 penalties against any steam distribution company for failure to  
27 comply with regulations promulgated by the department. In deter-  
28 mining the appropriateness of any fine or penalty, the department  
29 shall consider the seriousness of the violation and the good faith  
30 compliance efforts of the steam distribution company.

31 Section 3. The department shall provide written notice to  
32 attorney general of any violation of this chapter. The department's  
33 authority shall not diminish the authority of any municipality to  
34 regulate steam distribution, nor shall it diminish the authority of  
35 the department of public safety pursuant to Chapter 146.

1 SECTION 60. Chapter 268A of the General Laws is hereby  
2 amended by striking out Section 8B, as appearing in the 2006  
3 Official Edition, and inserting thereof the following section:—

4 Section 8B. No member or employee of the department of  
5 public utilities and the department of clean energy, within 1 year  
6 after his service has ceased or terminated, be employed by, or  
7 lobby said office on behalf of, any company or regulated industry  
8 over which said office had jurisdiction during the tenure of such  
9 member of the office.

1 SECTION 61. There is hereby established a commission which  
2 shall study the siting of energy facilities in the Commonwealth.  
3 Said study shall include, but not be limited to, the following:—

4 (i) the development of a procedure for coordinating and consol-  
5 idating applications to construct generating facilities between and  
6 among the energy facilities siting board, the department of envi-  
7 ronmental protection, and other appropriate agencies, to enable

8 one-stop shopping, so-called, for necessary permits or certificates  
9 or other appropriate streamlining of the permitting system;

10 (ii) the expansion of such coordinated procedures to other  
11 energy facilities, if appropriate;

12 (iii) possible changes to the energy facilities siting board's pro-  
13 cedures for reviewing electric and gas transmission lines in light  
14 of recent and proposed changes in the structure and regulation of  
15 the electric and gas industries, including regional approaches to  
16 the siting of such facilities;

17 (iv) clarification of the energy facilities siting board's jurisdic-  
18 tion over the re-powering of existing generating facilities at  
19 existing sites and the appropriate standards for reviewing such re-  
20 powerings;

21 (v) the development of coordinated procedures to encourage the  
22 reuse of existing industrial sites for the development of generating  
23 facilities;

24 (vi) the issue of application fees paid by developers to the  
25 energy facilities siting board and the correlation of such fees to  
26 the board's procedures, as statutorily revised pursuant to this act,  
27 in reviewing such applications; provided, that said study shall  
28 include, but not be limited to, recommendations, if any, on  
29 reducing the application fee paid by developers to the board in  
30 light of the board's statutorily revised standards of review of such  
31 applications pursuant to this act;

32 (vii) the establishment of a site characterization and suitability  
33 commission within the department of environmental protection,  
34 which would promulgate criteria to be applied to sites included in  
35 an application before the energy facilities siting board and rule on  
36 suitability of a proposed site as before said application is  
37 approved; and

38 (viii) the possibility of requiring applicants to provide either (a)  
39 evidence that the proposed facility would employ the best avail-  
40 able and most efficient technology to control and reduce water  
41 withdrawals, or (b) a description of the environmental impacts,  
42 costs, and reliability of the water withdrawal method chosen and  
43 an explanation of why the proposed technology was chosen.

44 Said commission shall consist of the secretary of the executive  
45 office of energy and environmental affairs, or his designee, who  
46 shall serve as the chairman of said study commission; the com-



47 missioner of the department of environmental protection, or his  
48 designee; a member of the energy facilities siting board other than  
49 the secretary of energy and environmental affairs, who shall be  
50 selected to serve on said commission by the governor; the house  
51 and senate chairmen of the joint committee on telecommunica-  
52 tions, utilities and energy; the house and senate chairmen of the  
53 joint committee economic development and emerging technolo-  
54 gies; and 10 members to be appointed by the governor, 1 of whom  
55 shall be a representative of the Massachusetts Municipal Associa-  
56 tion, 1 of whom shall be a representative of the Massachusetts  
57 Association of Health Boards, 2 of whom shall be a representative  
58 of an environmental protection organization, 2 of whom shall be  
59 representatives of the electric industry, including one member of  
60 the electric generation industry and one member representing an  
61 electric utility, 1 of whom shall be a representative of the gas  
62 industry, 1 of whom shall represent residential ratepayers, and 2 of  
63 whom shall be recommended by the Massachusetts AFL-CIO.  
64 Said study commission shall issue a final report, which shall  
65 include the results of its review and analysis, to the joint com-  
66 mittee on telecommunications, utilities and energy, and the house  
67 and senate committees on ways and means on or before January 1,  
68 2009.

1 SECTION 62. Commencing on July 1, 2008, and continuing for  
2 a period of 5 years thereafter, each distribution company, as  
3 defined in Section 1 of Chapter 164 of the General Laws, shall be  
4 required twice in that 5 year period to solicit proposals from  
5 renewable energy developers and, provided reasonable proposals  
6 have been received, enter into cost effective long-term contracts to  
7 facilitate the financing of renewable energy generation within the  
8 jurisdictional boundaries of the Commonwealth including state  
9 waters, or in adjacent federal waters. Said distribution companies  
10 may also voluntarily solicit additional such proposals over the 5  
11 year period. The timetable and method for solicitation and execu-  
12 tion of such contracts shall be proposed by the distribution com-  
13 pany in consultation with the department of clean energy and shall  
14 be subject to review and approval by the department. This long-  
15 term contracting obligation shall be separate and distinct from the  
16 electric distribution companies' obligation to meet applicable

17 annual Renewable Portfolio Standard, hereinafter referred to as  
18 RPS requirements, set forth in Section 11F of Chapter 25A of the  
19 General Laws.

20 For purposes of this section, a long-term contract is defined as  
21 a contract with a term of 10 to 15 years. In developing the provi-  
22 sions of proposed long term contracts, the distribution company  
23 shall consider multiple contracting methods, including long-term  
24 contracts for Renewable Energy Certificates, hereinafter referred  
25 to as RECs, for energy, and for a combination of both RECs and  
26 energy. The electric distribution company shall select a reasonable  
27 method of soliciting proposals from renewable energy developers,  
28 which may include public solicitations, individual negotiations, or  
29 other methods. The distribution company may decline to consider  
30 contract proposals having terms and conditions that it determines  
31 would require the contract obligation to place an unreasonable  
32 burden on the distribution company's balance sheet. The distribu-  
33 tion company shall consult with the division of energy resources  
34 regarding its choice of contracting methods and solicitation  
35 methods. All proposed contracts shall be subject to department of  
36 public utilities review and approval.

37 The department of public utilities and the department of clean  
38 energy each shall adopt regulations consistent with this section.  
39 The regulations shall:—

40 (a) allow renewable energy developers to submit proposals for  
41 long-term contracts conforming to the contracting methods speci-  
42 fied in the second paragraph of this section;

43 (b) require that any contracts executed by the distribution com-  
44 pany pursuant to such proposals are filed with and approved by  
45 the department of public utilities before they become effective. As  
46 part of its approval process, the department of public utilities shall  
47 consider the recommendations of the office of the attorney general  
48 relevant to such contracts, which recommendations shall be sub-  
49 mitted to the department within 45 days following the filing of  
50 such contracts with the department. The department of public util-  
51 ities shall take into consideration both the potential costs and ben-  
52 efits of such contracts, and shall approve such contracts only upon  
53 a finding that they are a cost effective mechanism for procuring  
54 renewable energy on a long-term basis;

55 (c) provide for an annual remuneration for the contracting dis-  
56 tribution company equal to 4% of the annual payments under the  
57 contract to compensate said company for accepting the financial  
58 obligation of the long term contract, such provision to be acted  
59 upon by the department of public utilities at the time of contract  
60 approval; and

61 (d) require that the renewable energy generating source to be  
62 used by such developer pursuant to such proposal meet the  
63 following criteria:—

64 (i) have a commercial operation date, as verified by the depart-  
65 ment of clean energy, on or after January 1, 2008;

66 (ii) be located within the jurisdictional boundaries of the Com-  
67 monwealth including state waters, or in adjacent federal waters;

68 (iii) be qualified by the department of clean energy as eligible  
69 to participate in the Massachusetts RPS program, pursuant to  
70 Section 11F of Chapter 25A of the general laws, and to sell RECs  
71 pursuant to such program;

72 (iv) be determined by the department to:—

73 (1) provide enhanced electricity reliability within the Common-  
74 wealth;

75 (2) contribute to moderating system peak load requirements;

76 (3) be cost effective to Massachusetts electric rate payers over  
77 the term of the contract; and

78 (4) where feasible, create additional employment in the Com-  
79 monwealth.

80 The distribution company shall not be obligated to enter into  
81 long-term contracts pursuant to this section that would, in the  
82 aggregate, exceed 3 per cent of the total energy demand from all  
83 distribution customers of the distribution company in its service  
84 territory. As long as the electric distribution company has entered  
85 into long term contracts in compliance with this section, the elec-  
86 tric distribution company shall not be required by regulation or  
87 order to enter into contracts with terms of more than three years in  
88 meeting its applicable annual renewable portfolio standard  
89 requirements set forth in Section 11F of Chapter 25A of the  
90 General Laws, unless the department finds that such contracts are  
91 in the best interest of customers, and provided further that the  
92 electric distribution company may execute such contracts volun-  
93 tarily, subject to department of public utilities approval.

94 An electric distribution company may elect to use any energy  
95 purchased under such contracts for resale to its customers, and  
96 may elect to retain RECs for purpose of meeting its applicable  
97 annual renewable portfolio standard requirements set forth in  
98 Section 11F of Chapter 25A of the General Laws. If the energy  
99 and RECs are not so used, such companies shall sell such pur-  
100 chased energy into the wholesale spot market, and shall sell such  
101 purchased RECs through a competitive bid process. Notwith-  
102 standing the foregoing, the department shall conduct periodic  
103 reviews to determine the impact on the energy and REC markets  
104 of the disposition of energy and RECs hereunder, and may issue  
105 reports making recommendations for legislative changes if it  
106 determines that actions are being taken that will adversely affect  
107 the energy and REC markets.

108 In the event the distribution company sells the purchased  
109 energy into the wholesale spot market and auctions the RECs as  
110 described in sixth paragraph, the distribution company shall net  
111 the cost of payments made to projects under the long-term con-  
112 tracts against the proceeds obtained from the sale of energy and  
113 RECs, and the difference shall be credited or charged to all distri-  
114 bution customers through a uniform fully reconciling annual  
115 factor in distribution rates, subject to review and approval of the  
116 department of public utilities. The reconciliation process shall be  
117 designed so that the distribution company recovers all costs  
118 incurred under such contracts.

119 In the event the RPS requirements of Section 11F of Chapter 25  
120 should ever terminate, the obligation to continue periodic solicita-  
121 tions to enter into long-term contracts shall cease, provided that  
122 any contracts already executed and approved by the department of  
123 public utilities shall remain in full force and effect.

124 On or before July 1, 2010 and annually until 2012 when the  
125 long term contracting requirement expires pursuant to paragraph  
126 1, the department of clean energy shall assess whether the long-  
127 term contracting requirements set forth in this section reasonably  
128 support the renewable energy goals of the Commonwealth as set  
129 forth in Section 11F of Chapter 25A of the General Laws, and  
130 whether the alternative compliance rate established pursuant to  
131 said Section 11F should be adjusted accordingly.

132 The provisions of this section shall not limit consideration of  
133 other contracts for RECs or power submitted by a distribution  
134 company for review and approval by the department of public  
135 utilities.

136 If any provision of this section is subject to a judicial challenge,  
137 the department of public utilities may suspend the applicability of  
138 the challenged provision during the pendency of the judicial  
139 action, until final resolution of the challenge and any appeals, and  
140 shall issue such orders and take such other actions as are neces-  
141 sary to ensure that the provisions that are not challenged are  
142 implemented expeditiously to achieve the public purposes of this  
143 provision.

1 SECTION 63. (a) Notwithstanding any general or special law  
2 to the contrary, each electric and gas company in the Common-  
3 wealth shall provide to the secretary of the executive office of  
4 energy and environmental affairs, a progress report detailing the  
5 status of the arrearage management programs for eligible low-  
6 income customers, pursuant to Chapter 164 of the General Laws.  
7 Each electric and gas company shall provide said progress report  
8 to the secretary no later than June 1, 2008. The secretary shall  
9 review and approve each progress report with such modifications  
10 as the secretary deems appropriate, no later than September 1,  
11 2008. The secretary shall continue to conduct an annual review of  
12 such programs and may at any time order such revisions or modi-  
13 fications as the secretary deems appropriate. For purposes of this  
14 section, an arrearage management program shall include a plan  
15 under which companies work with eligible low-income customers  
16 to establish affordable payment plans and provide credits to those  
17 customers toward the accumulated arrears where such customers  
18 comply with the terms of the program.

19 (b) The secretary shall require a company that initially offers a  
20 low income customer who has an arrearage, but whose utility  
21 service has not yet been terminated, a payment plan of not less  
22 than 4 months including the initial down payment of 25 per cent  
23 of the balance owed, and the remaining repayment balance  
24 amounts shall be divided equally; provided, however, that the sec-  
25 retary may authorize a repayment period of less than 4 months for  
26 good cause. A company making such a request shall notify the

27 customer that the request has been made. This paragraph shall not  
28 limit the right of a customer to request a payment plan of more  
29 than 4 months or limit the authority of the secretary to order a  
30 payment plan of more than 4 months either on an individual basis  
31 or through revisions to its billing and termination regulations.

1 SECTION 64. The secretary of executive office of energy and  
2 environmental affairs shall, in conjunction with the department of  
3 public utilities implement a “energy pay and save”, hereinafter  
4 referred to as EPS pilot program, allowing electric utility cus-  
5 tomers to purchase and install renewable energy products in their  
6 residences or commercial facilities, by paying the cost of the  
7 system over time through an additional charge on the customer’s  
8 electricity bill. The cost of the products purchased under the pilot  
9 program shall be added to the electric utility customer’s utility  
10 bills, as a monthly EPS tariff, and shall be paid until the cost of  
11 purchase and installation of the products is paid off. The payment  
12 structure shall be implemented so that the charge on the electric  
13 utility customer’s utility bill shall be less than the energy savings  
14 of that customer over the course of each given year. Non-payment  
15 by the owner of the EPS tariff shall result in disconnection, and a  
16 utility shall be entitled to recover the debt.

17 The pilot program shall be established with a minimum of 50  
18 participants and a maximum of 200 participants. The maximum  
19 project size for the program shall be \$1,000 for commercial utility  
20 customers and \$500 for residential utility customers. Portable  
21 electrical cost measures shall not be funded. Quick pay options  
22 shall be investigated, allowing customers to have the option to pay  
23 off the entire balance of the amount financed on the first billing  
24 cycle. The program shall be funded from such sources as deter-  
25 mined by the secretary and such funds shall be used to offset the  
26 cost of the program for the utilities, and as such payments for the  
27 purchases are paid to said utilities.

28 The pilot program shall be implemented on or before June 1,  
29 2008 and shall expire on December 31, 2008. The secretary and  
30 the department shall issue a final report, which shall include the  
31 results of its review and analysis, to the joint committee on  
32 telecommunications, utilities and energy, and the house and senate  
33 committees on ways and means on or before June 1, 2009.

1 SECTION 65. On or before September 1, 2008, each electric  
2 distribution company shall file a proposed plan with the depart-  
3 ment of public utilities to establish a “smart grid” pilot program.  
4 Each such pilot program shall utilize advanced technology to  
5 operate an integrated grid network communication system in a  
6 limited geographic area. Each pilot program shall include, but not  
7 be limited to advanced (“smart”) meters that provide real time  
8 measurement and communication of energy consumption, auto-  
9 mated load management systems embedded within current  
10 demand-side management programs and remote status detection  
11 and operation of distribution system equipment. On or before Sep-  
12 tember 1, 2008, each electric distribution company shall file a  
13 proposal with the department of public utilities to implement a  
14 pilot program that requires time of use or hourly pricing for com-  
15 modity service for a minimum of 0.5 per cent of the company’s  
16 customers. A specific objective of the pilot would be to reduce,  
17 for those customers who actively participate in the pilot, peak  
18 loads by a minimum of 5 per cent. The programs filed by the dis-  
19 tribution company shall include proposals for rate treatment of  
20 incremental program costs. The department shall review and  
21 approve or modify such plans on or before January 1, 2009. Plans  
22 which provide for larger numbers of customers and can show  
23 higher bill savings than outlined above would be eligible to earn  
24 incentives as outlined in an approved plan. Following the comple-  
25 tion of the pilot programs, the secretary of energy and environ-  
26 mental affairs shall submit a report to the joint committee on  
27 telecommunications, utilities and energy no later than February 1,  
28 2011 detailing the operation and results of such programs,  
29 including information concerning changes in consumer’s energy  
30 use patterns, an assessment of the value of the program to both  
31 participants and non-participants and recommendations con-  
32 cerning modification of the programs and further implementation.

1 SECTION 66. The secretary of the executive office of energy  
2 and environmental affairs shall establish a 2 year pilot program  
3 providing smart meters to residential and commercial industrial  
4 customers along with implementation of phone and e-mail notifi-  
5 cation systems to warn those customers of high prices so they can  
6 reduce their usage accordingly.

7 The secretary shall establish a demand-response pilot program  
8 providing commercial and residential consumers with the neces-  
9 sary equipment to participate in such a program.

10 The program shall provide 5,000 smart meters to residential  
11 and commercial participants. This shall be a 2 year pilot program  
12 beginning in November 1, 2008 and ending on November 1, 2010.  
13 The secretary of energy and environmental affairs shall direct  
14 electric utilities located in the Commonwealth to install meters  
15 capable of recording hourly energy use at the service location of  
16 each customer that elects real-time pricing. In addition to pro-  
17 viding 5,000 meters, the secretary of energy and environmental  
18 affairs shall direct the electric utilities to implement phone and e-  
19 mail notification systems to participants necessary for participa-  
20 tion in the pilot program. This pilot program is intended to help  
21 consumers lower their monthly utility bills and reduce electricity  
22 demand.

23 Following the completion of the pilot program, the secretary  
24 shall submit a report to the joint committee on telecommunica-  
25 tions, utilities and energy, and the house and senate committees on  
26 ways and means on or before March 1, 2011, detailing the opera-  
27 tion and results of the program, including information concerning  
28 changes in customers' energy use patterns, an assessment of the  
29 value of the program to both participants and non-participants,  
30 and recommendations concerning modification of the program.

1 SECTION 67. The secretary of the executive office of energy  
2 and environmental affairs shall make recommendations regarding  
3 what supplemental state funds, if any, shall be expended for the  
4 federal Low Income Home Energy Assistance Program, pursuant  
5 to 42 U.S.C. Section 8621 et seq., for the purpose of assisting  
6 low-income elders, working families and other households with  
7 the purchase of heating oil, propane, natural gas and electricity  
8 and other primary or secondary heating sources; provided, how-  
9 ever, that any recommended expenditures in addition to any fed-  
10 eral funding shall be made in accordance with the state plan  
11 submitted by the department of housing and community develop-  
12 ment in accordance with said federal program. The recommenda-  
13 tions shall include recommended funding levels and funding  
14 sources. The secretary of the executive office of energy and envi-



15 ronmental affairs shall submit the plan to the joint committee on  
16 telecommunications, utilities and energy on or before October 1,  
17 2008.

1 SECTION 68. The department of public utilities shall direct all  
2 distribution companies, as defined in Section 1F of Chapter 164 of  
3 the General Laws, to submit a plan within 60 days of the effective  
4 date of this Act providing for retail access to competitive sellers  
5 of renewable energy generation attributes, whether or not bundled  
6 with electricity. The department shall approve or modify such plan  
7 after an opportunity for notice and comment by all interested per-  
8 sons; provided however, if a distribution company provides retail  
9 access to competitive sellers of renewable energy generation  
10 attributes prior to the effective date of this act, it shall not be  
11 required to file a plan pursuant to this section.

1 SECTION 69. There is hereby established a special commis-  
2 sion to consist of 3 members of the senate, including the senate  
3 chairman for the joint committee on telecommunications, utilities  
4 and energy who shall serve as co-chairman, and 3 members of the  
5 house of representatives, including the house chairman for the  
6 joint committee on telecommunications, utilities and energy who  
7 shall serve as co-chairman, the commissioner of the department of  
8 clean energy or his designee, the secretary of energy and environ-  
9 mental affairs or his designee and 3 persons to be appointed by the  
10 governor, 1 of whom shall be a representative of the waste-to-  
11 energy industry, and 1 of whom shall be a representative of a con-  
12 sumer advocacy organization, for the purpose of making an  
13 investigation and study relative to the burning of commercial and  
14 demolition waste as it relates to the Massachusetts Renewable  
15 Energy Portfolio Standard Program, established by Section 11F of  
16 Chapter 25A of the General Laws. Said commission shall report  
17 the results of its investigation and study and its recommendations,  
18 if any, together with drafts of legislation necessary to carry its rec-  
19 ommendations into effect by filing the same with the clerks of the  
20 senate and the House of Representatives on or before July 1,  
21 2008.

1 SECTION 70. (a) On or before January 1, 2009, the board of  
2 registration of home inspectors, in consultation with the state  
3 board of building regulations and standards, the department of  
4 clean energy, and the energy efficiency advisory council, shall  
5 develop requirements and promulgate regulations establishing a  
6 home energy scoring program to be performed as a part of the  
7 standard home inspection of single-family residential dwellings  
8 and multiple-family residential dwellings with fewer than 5  
9 dwelling units performed at the time of sale by inspectors licensed  
10 pursuant to Chapter 112 of the General Laws. The board of regis-  
11 tration of home inspectors shall consider other state home scoring  
12 programs, as well as any relevant federal programs.

13 (b) The board may include in its regulations any provisions  
14 requiring sellers of such dwellings to provide potential buyers  
15 with copies of the prior calendar year's utility and, if any, oil  
16 heating bills for the dwelling; and, if the seller has not retained  
17 such bills, may include provisions requiring utilities and heating  
18 oil distributors to provide potential sellers billing information for  
19 the dwelling for the prior calendar year.

20 (c) The regulations shall include provisions for training, licen-  
21 sure, and standards of professional and ethical conduct for home  
22 energy scoring personnel, and provisions for the establishment of  
23 reasonable fees for their services, to be paid to such personnel by  
24 the sellers or purchasers of dwellings.

25 (d) Before implementation of any regulations established pur-  
26 suant to this section, the board of registration of home inspectors  
27 shall report to the senate and house committees on ways and  
28 means, and the committees on consumer protection and profes-  
29 sional licensure and telecommunications, utilities and energy on  
30 the perceived added costs, if any, to sellers or purchasers of  
31 dwellings relating to the implementation of this section. Said  
32 report shall include any recommendations deemed appropriate by  
33 the board, including but not limited to, any added costs being  
34 absorbed by any existing energy efficiency program funding  
35 sources or mechanisms.

1 SECTION 71. The department of clean energy shall, in consul-  
2 tation with the department of conservation and recreation, a repre-  
3 sentative from the Bureau of Forestry, and the department of

4 environmental protection, commence a public rulemaking process  
5 no later than July 1, 2008, to examine the use of non-sustainably  
6 harvested virgin wood as a biomass fuel for inclusion in Class I  
7 and II of the Massachusetts renewable portfolio standard pursuant  
8 to Section 11F of Chapter 25A of the General laws. Said process  
9 shall be complete on or before July 1, 2009.

1 SECTION 72. The department of public utilities shall establish  
2 a pilot program, hereinafter referred to as the HEAT Loan Pro-  
3 gram, to assist consumers with the purchase of energy efficient  
4 items for residential home modifications. For the purposes of this  
5 program, energy efficient items shall include home insulation,  
6 new window installation, advanced programmable thermostats,  
7 fuel efficient furnaces, boilers, oil, gas, propane, or electric  
8 heating systems, solar domestic or fuel efficient hot water sys-  
9 tems, materials for insulation or sealing of a duct, attic, basement,  
10 rim joint or wall and pipe insulation for heating systems or other  
11 retail items for use in a residential dwelling that increase the  
12 energy efficiency of said dwelling.

13 In establishing the program, the department shall develop a list  
14 of qualified state or federally chartered banking institutions or  
15 credit unions that do business in the Commonwealth and that are  
16 governed by Chapter 167 or 171 of the General Laws as participa-  
17 tory lending institutions. For the purposes of this section, a quali-  
18 fied lending institution shall include a lending institution, as  
19 described herein that is certified by the executive office and which  
20 shall offer zero and low interest loans for the purpose of  
21 enhancing the energy efficiency of a residential dwelling. The  
22 program shall be funded from that portion of the mandatory  
23 charge that is authorized by this section and allocated to residen-  
24 tial customers consistent with Section 19 of Chapter 25 of the  
25 General Laws; provided, however, that not less than \$5,000,000  
26 shall be made available to assist participating financial institutions  
27 in offering said loan products by or through interest rate write  
28 downs or other credit enhancement features; and provided, further,  
29 that loans offered pursuant to the program shall be offered to resi-  
30 dential homeowners in the Commonwealth solely for the purposes  
31 stated herein. The department shall make such loans available for  
32 purchases made on or after January 1, 2008, but not later than

33 December 31, 2008. The department shall establish the rules and  
34 guidelines to carry out the purposes of this section, including, but  
35 not limited to, establishing applicant criteria, application forms  
36 and procedures, and energy efficiency product requirements and  
37 lending institution tracking and reporting requirements. The  
38 department shall submit a report detailing the rules and guidelines  
39 to the joint committee on telecommunications, utilities and energy  
40 no later than January 1, 2009. The department shall submit a  
41 report detailing the program results no later than February 1, 2009  
42 to the joint committee on telecommunications, utilities and energy  
43 and the house and senate committees on ways and means.

1 SECTION 73. It is established that the Commonwealth's clean  
2 energy goals are as follows:—

3 (i) meet at least 25 per cent of the Commonwealth's electric  
4 load, including both capacity and energy, by the year 2020 with  
5 clean, demand side resources including:— energy efficiency, load  
6 management, demand response, and generation that is located  
7 behind a customer's meter and is a combined heat and power  
8 system with an annual efficiency of 60 per cent or greater with the  
9 goal of 80 per cent annual efficiency for combined heat and power  
10 systems by 2020;

11 (ii) meet at least 20 per cent of the Commonwealth's electric  
12 load by the year 2020 through new, renewable generation;

13 (iii) reduce the use of fossil fuel in buildings by 10 per cent  
14 from 2007 levels by the year 2020 through the increased effi-  
15 ciency of both equipment and the building envelope;

16 (iv) reduce greenhouse gas emissions by 20 per cent from 1990  
17 levels by the year 2020; and

18 (v) develop a plan to reduce total energy consumption in the  
19 Commonwealth by at least 10 per cent by 2017 through the devel-  
20 opment and implementation of the green communities program  
21 that utilizes renewable energy, demand reduction, conservation  
22 and energy efficiency. The secretary shall annually, no later than  
23 September 1st, establish an annual reduction target for the Com-  
24 monwealth for the following calendar year.

25 (b) The secretary of energy and environmental affairs shall pre-  
26 pare and submit to the energy advisory board for review and  
27 approval a 5-year plan for meeting the clean energy goals of the

28 Commonwealth. The plan shall include strategies to meet each of  
29 the clean energy goals and shall also address the following  
30 topics:—

- 31 (1) reduction of energy use in state buildings;
- 32 (2) reduction of energy use in municipal buildings;
- 33 (3) equitable distribution of program benefits to all customers  
34 and particularly low income customers to address the affordability  
35 and adverse impacts on low-income households of energy costs  
36 and demand mitigation strategies, and mitigation of such adverse  
37 impacts, such as by compensating adjustments to the low-income  
38 rate discount;
- 39 (4) the use of investment tax credits and tax policy generally to  
40 encourage investment in energy efficiency and renewable tech-  
41 nologies;
- 42 (5) increased generation and use of renewable energy;
- 43 (6) siting reform;
- 44 (7) the coordination and integration of programs within the  
45 Commonwealth and with regional efforts carried out by other New  
46 England states;
- 47 (8) progress towards improving the efficiency of buildings and  
48 mechanical systems on an all-fuels basis including, electric, gas  
49 and oil; and
- 50 (9) the use of low-carbon biofuels evaluated on a lifecycle  
51 basis.

52 (c) The secretary shall appoint an advisory board to assist in the  
53 development and review of the plan. The board shall review the  
54 plan and solicit stakeholder input and review. The board shall  
55 submit its findings and recommendations to the secretary who  
56 shall address the board's findings and recommendations and  
57 submit the plan to the speaker of the house of representatives, the  
58 president of the senate, the joint committee on telecommunica-  
59 tions, utilities and energy, and the members of the board.

60 (d) The 5-year plan shall designate the agency responsible for  
61 implementation of each strategy and shall include timelines, per-  
62 formance standards, specific regulatory or legislative changes,  
63 evaluation procedures and additional budget requirements. The  
64 secretary shall conduct an annual performance evaluation of each  
65 program and regulatory initiative and, no later than 3 months after  
66 the end of each fiscal year, shall submit the results of those

67 evaluations to the clerk of the house of representatives, who shall  
68 forward the same to the joint committee on telecommunications,  
69 utilities and energy, and the members of the energy advisory  
70 board.

1 SECTION 74. On or before January 1, 2011, the department of  
2 public utilities, in consultation with the department of clean  
3 energy, shall file a report on the effectiveness of the programs  
4 administered pursuant to this section. Said report shall include a  
5 financial account of all funds incurred by and administered under  
6 this section, and any recommendations deemed appropriate by the  
7 department, including but not limited to the reduction or elimina-  
8 tion of any mandatory charges authorized under this section as  
9 they may relate to programs and plans pursuant to Sections 21 and  
10 22 of Chapter 25 of the general laws; provided, however, that any  
11 recommendation for reduction or elimination should include a  
12 mechanism to ensure continued adequate funding for comprehen-  
13 sive low income demand-side management and education pro-  
14 grams. Said report shall be filed with the house and senate clerks  
15 who shall forward the same to the house and senate committees on  
16 ways and means and the joint committee on telecommunications,  
17 utilities and energy.

1 SECTION 75. The department of public utilities shall hold a  
2 public hearing and issue a report, no later than July 1, 2008,  
3 relative to whether it is cost effective to require electric compa-  
4 nies and municipal lighting plants to replace meters for measuring  
5 electricity to consumers. The report shall include an evaluation of  
6 the frequency of replacements, the standards and practices  
7 employed by distribution companies to determine when replace-  
8 ment is necessary and rate impacts and cost benefit analysis of  
9 installing advanced metering technology. The department shall  
10 report to the committees on ways and means and the joint com-  
11 mittee on telecommunications, utilities and energy its recommen-  
12 dations and proposed legislation, if any.

1 SECTION 76. Section 34 shall take effect on March 31, 2009.