

Senate, No. 2768

[Senate, June 23, 2008 - Report of the committee of conference on the disagreeing votes of the two branches, with reference to the House amendments to the Senate Bill to generate renewable energy and efficiency now (Senate, No. 2468, printed as amended) (*amended by the House* by striking out the text and inserting in place thereof the text contained in House document numbered 4373.)]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND EIGHT

AN ACT RELATIVE TO GREEN COMMUNITIES

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide *forthwith* for renewable and alternative energy and energy efficiency in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Section 9A of chapter 7 of the General Laws, as appearing in the 2006
2 Official Edition, is hereby amended by adding the following 4 paragraphs:-

3 When purchasing new motor vehicles, the commonwealth shall purchase hybrid or
4 alternative fuel vehicles, as defined in section 1 of chapter 90, to the maximum extent feasible
5 and consistent with the ability of such vehicles to perform their intended functions, at a rate of
6 not less than 5 per cent annually for all new motor vehicle purchases so that, taking into account
7 the existing number of such vehicles owned and operated by the commonwealth, not less than
8 50 per cent of the motor vehicles owned and operated by the commonwealth shall be hybrid or
9 alternative fuel vehicles by the year 2018.

10 The division of operational services shall forward to the department of energy resources
11 all requests for motor vehicle acquisitions by agencies of the commonwealth. The department of

12 energy resources shall thereafter report to the division of operational services regarding the
13 availability of a hybrid or alternative fuel vehicle that shall achieve the intended use designated
14 by the requesting agency. The division of operational services, in consultation with the
15 departments of energy resources and environmental protection, shall adopt a fuel efficiency
16 standard for passenger vehicles owned or operated by the commonwealth.

17 The division of capital asset management and maintenance, in consultation with the
18 department of energy resources, shall develop a system of protocols for the acquisition of
19 alternative fuel vehicles and hybrids, including identifying the potential for acquisition of
20 heavy, medium and light-duty vehicles, based on the anticipated mileage and usage of such
21 vehicles, and the effectiveness of single-fuel or dual-fuel alternative fuel vehicles for the
22 particular purpose identified.

23 The division of operational services, jointly with the department of energy resources,
24 and the executive office of energy and environmental affairs shall submit to the secretary of
25 administration and finance, the clerks of the senate and house of representatives and the joint
26 committee on state administration and regulatory oversight an annual statement on or before
27 July 1 each year detailing the progress in meeting the requirements of this section. This report
28 shall include the percentage of fuel used for the alternative fuel vehicles owned and operated by
29 the commonwealth that qualifies as alternative fuel, as defined in section 1 of chapter 90, and
30 the amount and cost of non-alternative fuel foregone as a consequence of the use of alternative
31 fuel.

32

33 SECTION 2. Said chapter 7 is hereby further amended by inserting after section 39C
34 the following section:-

35 Section 39D. (a) The commissioner shall require a state agency that initiates the
36 construction of a new facility owned or operated by the commonwealth or a renovation of an
37 existing facility owned or operated by the commonwealth when the renovation costs exceed
38 \$25,000 and includes the replacement of systems, components or other building elements which
39 affect energy or water consumption to design and construct or renovate the facility in a manner
40 that minimizes the life-cycle cost of the facility by utilizing energy efficiency, water
41 conservation or renewable energy technologies under the following criteria:

42 (1) the state agency shall utilize alternate technologies when the life-cycle cost analysis
43 conducted under subsection (b) shows that such systems are economically feasible;

44 (2) each new educational facility, including a municipal educational facility financed
45 through the school building assistance program, for which the projected demand for hot water
46 exceeds 1,000 gallons per day or which operates a heated swimming pool, shall be constructed,
47 whenever economically and physically feasible, with a solar or other renewable energy system
48 as the primary energy source for the domestic hot water system or swimming pool of the
49 facility;

50 (3) the division of capital asset management and maintenance or the state agency shall,
51 in the design, construction, equipping and operation of such facilities, coordinate these efforts
52 with the department of energy resources in order to maximize reliance on, and the benefits of,
53 renewable energy research and investment activities; and

54 (4) all higher education construction projects shall, at a minimum incorporate the MA-
55 CHPS Green Schools Guidelines standards or an equivalent standard.

56 (b) The division of capital asset management and maintenance or the state agency
57 initiating the construction or renovation of a facility as described in subsection (a) shall conduct
58 a life-cycle cost analysis of any such facility's proposed design that evaluates the short-term and
59 long-term costs and the technical feasibility of using alternate technologies to provide lighting,
60 heat, water heating, air conditioning, refrigeration, gas or electricity. In calculating life-cycle
61 costs, a state agency shall include the value of avoiding carbon emissions, creating renewable
62 energy certificates and other environmental and associated benefits created from the utilization
63 of alternate technologies, as applicable. This value shall be equal to the bid price of the
64 published market value of any such benefit and shall increase or decrease at a projected rate
65 determined by the department of energy resources. To calculate life-cycle costs, a state agency
66 shall use a discount rate equal to the rate that the commonwealth's tax-exempt long-term bonds
67 are yielding at the time of said calculation and shall assume that the cost of fossil fuels and
68 electricity will increase at the rate of 3 per cent per year above the estimated rate of inflation or
69 at a rate determined by the department of energy resources.

70 (c) Notwithstanding sections 11C and 11I of chapter 25A or any regulations issued
71 thereunder, the division of capital asset management and maintenance may procure energy
72 management services jointly with a state agency or a building authority that is procuring energy

73 or related services. Said sections 11C and 11I shall apply to the extent feasible as determined by
74 the commissioner of energy resources.

75 (d) For purposes of this section, the term “economically feasible” shall mean that the
76 cost of installing and operating an alternate technology is lower than the cost of installing and
77 operating the energy, energy-using technology or water-using technology that would otherwise
78 be installed, as determined by a life-cycle cost analysis.

79 (e) The division of capital asset management and maintenance or the state agency
80 initiating the construction or renovation of a facility subject to the requirements of subsection
81 (a) shall file with the department of energy resources a report detailing the agency’s compliance
82 with this section with respect to each such facility.

83 (f) The department of energy resources shall issue an annual report to the general court
84 detailing the compliance record of all state agencies with the construction and renovation
85 provisions of this section.

86

87 SECTION 3. Chapter 10 of the General Laws is hereby amended by inserting after
88 section 35HH the following section:-

89 Section 35II. There shall be established and set up on the books of the commonwealth a
90 separate fund to be known as the RGGI Auction Trust Fund. The fund shall consist of amounts
91 credited to the fund in accordance with section 22 of chapter 21A and expended exclusively for
92 the purposes of said section 22 of said chapter 21A. The fund shall be administered by the
93 commissioner of energy resources, subject to the approval of the secretary of energy and
94 environmental affairs. The fund shall be an expendable trust fund and shall not be subject to
95 appropriation or allotment. The commissioner shall report monthly by source all amounts
96 credited to the fund and all expenditures by subsidiary made from the fund on the Massachusetts
97 management and accounting reporting system. Amounts remaining in the fund at the end of a
98 fiscal year shall not revert to the General Fund and shall be available for expenditure in the next
99 fiscal year and thereafter.

100

101 SECTION 4. Chapter 12 of the General Laws is hereby amended by striking out section
102 11E, as appearing in the 2006 Official Edition, and inserting in place thereof the following
103 section:-

104 Section 11E. (a) There shall be within the office of the attorney general, an office of
105 ratepayer advocacy. The attorney general, through the office of ratepayer advocacy, may
106 intervene, appear and participate in administrative, regulatory, or judicial proceedings on behalf
107 of any group of consumers in connection with any matter involving rates, charges, prices and
108 tariffs of an electric company, gas company, generator, transmission company, telephone
109 company and telegraph company doing business in the commonwealth and subject to the
110 jurisdiction of the department of public utilities or the department of telecommunications and
111 cable. In addition, the attorney general may intervene, appear and participate in federal energy
112 regulatory commission or other federal energy proceedings on behalf of ratepayers in the
113 commonwealth.

114 The office of the ratepayer advocacy shall be under the direction of an assistant attorney
115 general appointed under section 2. The assistant attorney general shall devote his full time and
116 attention to the duties of the office.

117 For the purpose of such an intervention, appearance or participation, the attorney general
118 may expend such funds as may be appropriated. These expenditures shall not exceed annually
119 the amount assessed against such electric, gas, telephone and telegraph company under section 3
120 of chapter 24A, notwithstanding subsection (b). The attorney general shall not expend any of
121 such funds if the expenditure shall conflict with his duties under section 3.

122 (b) In the performance of his duties under this section, the attorney general may retain an
123 expert or a consultant to assist in proceedings before the department of public utilities or the
124 department of telecommunications and cable. If the attorney general determines that the services
125 of an expert or a consultant are necessary in a proceeding, he shall file notice in the proceeding
126 that includes the type of expert or consultant sought and the anticipated cost. Upon the filing of
127 such notice, the department before which the proceeding is commencing shall allow full parties
128 to the proceeding the opportunity to comment regarding the necessity or desirability of such
129 services. Absent a showing that the costs proposed are unnecessary for the attorney general to
130 represent ratepayer interests in the proceeding or that such costs are not reasonable or proper,
131 the use of the expert or consultant shall be approved. Costs for an expert or a consultant shall
132 not exceed \$150,000 per proceeding unless approved by the department based upon exigent
133 circumstances, including the complexity of the proceeding. All reasonable and proper
134 expenses, as defined in this section, shall be borne by the affected party in the proceeding and

135 shall be paid by such party at such times and in such manner as the attorney general directs. All
136 reasonable and proper costs and expenses, as defined in this section, shall be recognized by the
137 departments for all purposes as proper business expenses of the affected party, recoverable
138 through rates without further approval from the departments.

139 (c) The attorney general may request, orally or in writing, that any company subject to
140 the jurisdiction of the department of public utilities or the department of telecommunications
141 and cable respond to not more than 15 information requests, including subparts, per calendar
142 month regarding any matter related to the rates, charges, tariffs, books or service quality of the
143 company, and the company shall answer these information requests fully and completely in a
144 reasonably prompt manner, not to exceed 30 calendar days from the date of issuance, regarding
145 any issue that is within the jurisdiction of the department. Department rules pertaining to the
146 scope of questions and objections to discovery shall apply to any such request and the
147 department shall have jurisdiction to rule on any objections or motions to compel. If the
148 company fails to answer the information requests in a reasonably prompt manner, the attorney
149 general may request enforcement of this subsection from the department having jurisdiction
150 over the company.

151

152 SECTION 5. Chapter 13 of the General Laws is hereby amended by inserting after
153 section 97 the following section:-

154 Section 97A. The board of registration of home inspectors, in consultation with the state
155 board of building regulations and standards, the executive office of energy and environmental
156 affairs and the energy efficiency advisory council, shall develop requirements and adopt
157 regulations to require documents to be provided to a buyer of a single-family residential
158 dwelling or a multiple-family residential dwelling with less than 5 dwelling units, or a
159 condominium unit at the time of closing, outlining the procedures and benefits of a home energy
160 audit; provided however, that no additional fees shall be imposed or collected in connection
161 with the provision of such documents.

162

163 SECTION 6. Section 7 of chapter 21A of the General Laws, as so appearing, is hereby
164 amended by striking out, in the first sentence, the word “division” and inserting in place thereof
165 the following word:- department.

166

167 SECTION 7. Said chapter 21A is hereby further amended by adding the following 2
168 sections:-

169 Section 21. The secretary, in conjunction with the secretary of administration and
170 finance, shall design and implement a bidding process for the competitive procurement of
171 electric generation on behalf of any agency, executive office, department, board, commission,
172 bureau, division or authority of the commonwealth procuring electricity from a local
173 distribution company via basic service under section 1B of chapter 164. Any such competitive
174 bid received shall include payment options with rates that remain uniform for a minimum period
175 of 1 year. In lieu of designing and implementing a competitive bidding process as required by
176 this section, the secretary may become a member of programs organized and administered by
177 the Health and Educational Facilities Authority or its subsidiary organization for the purpose of
178 such competitive group purchasing of electricity.

179 Section 22. (a) As used in this section, the following words shall have the following
180 meanings, unless the context clearly requires otherwise:

181 “Allowance”, an authorization to emit a fixed amount of carbon dioxide.

182 “Cap and trade program”, a policy approach for controlling emissions from a group of
183 emitting sources, such as electric generating stations, at a total cost that is expected to be lower
184 than if sources were regulated individually by setting an overall cap or maximum amount of
185 emissions from all regulated sources per compliance period that will achieve the desired
186 environmental effects; provided, however, that a certain number of authorizations to emit in the
187 form of emissions allowances shall be created, issued and made available to persons,
188 companies, organizations or other entities through a sale by auction or direct allocation; and
189 provided further that the total number of allowances made available in a compliance period
190 shall not exceed the cap.

191 “Department”, department of environmental protection.

192 “RGGI” or “Regional Greenhouse Gas Initiative”, the Memorandum of Understanding
193 dated December 20, 2005, and any amendments thereto and the corresponding Model Rule and
194 any amendments thereto that establishes a cap and trade program within the northeast region of
195 the United States and other regions to the extent that the Memorandum of Understanding is
196 amended.

197 (b) The department, in consultation with the department of energy resources, shall adopt
198 rules and regulations establishing a carbon dioxide cap and trade program to limit and reduce
199 the total carbon dioxide emissions released by electric generating stations that generate electric
200 power. The rules and regulations shall comply with RGGI and permit the holders of carbon
201 dioxide allowances to trade them in a regional market to be established through the RGGI.

202 (c)(1) The department shall provide, by regulation that all allowances issued under the
203 program shall be offered for sale by auction. The proceeds recovered from the allowance
204 auctions shall be deposited in the RGGI Auction Trust Fund established in section 35II of
205 chapter 10. The proceeds shall be used without further appropriation for the following purposes
206 only and shall be in a proportion to be determined by the department of energy resources with
207 the approval of the secretary:

208 (i) to reimburse a municipality in which the property tax receipts, including, for the
209 purposes of this clause, payments in lieu of taxes, are reduced as a result of the mandates of
210 RGGI or the regulation of carbon dioxide emissions from electric generating stations; provided,
211 however, that the amount of the payment shall be the difference between the amount of the tax
212 receipts in the current tax year and the amount of the tax receipts in the year before
213 implementation of RGGI; provided further, that no reimbursement shall be made if, in a tax
214 year, the aggregate amount paid to a municipality by the owner of an electric generating station
215 including, but not limited to, payments in lieu of taxes and property taxes, exceeds the aggregate
216 amount paid to that municipality by that owner in the year before implementation of RGGI; and
217 provided further, that payments from the fund shall be prioritized so that the first payments from
218 the fund shall be made to municipalities under this clause;

219 (ii) to fund the green communities program established in section 10 of chapter 25A;

220 (iii) to provide zero interest loans to municipalities, which are not green communities
221 under section 10 of chapter 25A for energy efficiency projects;

222 (iv) to promote energy efficiency, conservation and demand response; and

223 (v) to reimburse the commonwealth for costs associated with the administration of the
224 cap and trade program.

225 (2) Notwithstanding this section, the department may set aside up to 1 per cent of the
226 commonwealth's annual allocation of allowances to support the voluntary green power market
227 which enables electricity consumers to support the development of renewable resources.

228 (d) The department of energy resources shall adopt regulations governing the auction of
229 allowances. The department of energy resources may hire an independent contractor
230 determined by the office to be qualified to conduct the auction in a manner that ensures the
231 efficiency of the auction, or may provide for participation in a regional auction.

232 (e) The responsibilities created by establishing a carbon dioxide cap and trade program
233 shall be in addition to any other responsibilities imposed by any other general or special law or
234 rule or regulation and shall not diminish or reduce any power or authority of the department,
235 including the authority to adopt standards and regulations necessary for the commonwealth to
236 join and fully participate in a multistate program at any stage in the development and
237 implementation of such a program intended to control emissions of carbon dioxide or other
238 substances that are determined by the department to be damaging or altering the climate.

239 (f) Notwithstanding any general or special law or rule or regulation to the contrary, the
240 state comptroller shall grant a permanent waiver or exemption from any applicable charges or
241 assessments made against the proceeds from the auction of allowances under this section by the
242 office of the comptroller under its authority under sections 5D of chapter 29.

243 (g) Notwithstanding any general or special law or regulation to the contrary, any
244 information required by the department of energy resources or the department of any party
245 participating in the cap and trade program, with the exception of any emission, offset and
246 allowance tracking information required for compliance with the cap and trade program, shall
247 be maintained for the sole and confidential use of the commonwealth, the department, the
248 department of energy resources and their agents. This information shall not be deemed to be a
249 public record as defined in clause Twenty-sixth of section 7 of chapter 4 and shall not be subject
250 to demand for production under section 10 of chapter 66. Aggregates of such information may
251 be prepared and such aggregates shall be public records. All information collected under this
252 section may be shared with other states which afford such information similar protection from
253 public disclosure.

254

255 SECTION 8. Clause (ii) of subsection (a) of section 3D of chapter 23A of the General
256 Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 50,
257 the word "space." and inserting in place thereof the following words:- space;

258

259 (K) the area has been designated by the municipality as an area with potential for the
260 development of a Class I renewable energy generating sources, as defined by section 11F of
261 chapter 25A.

262

263 SECTION 9. Chapter 25 of the General Laws is hereby amended by inserting after
264 section 5D the following section:-

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

275 Upon written complaint of the attorney general requesting an independent audit of a
276 company subject to the department's jurisdiction, the department shall commence a proceeding
277 within 30 days of receipt of the complaint for the purpose of ordering the requested audit in a
278 reasonable time. The results of any audit so ordered shall be filed promptly with the department
279 and each audit shall be paid for by the company that is the subject of the audit.

280

281 SECTION 10. Said chapter 25 is hereby further amended by inserting after section 18
282 the following section:-

283 Section 18A. The commission may make an assessment against each steam distribution
284 company under the jurisdictional control of the department. Each steam distribution company
285 shall annually report by March 31 its intrastate operating revenues for the previous calendar
286 year to the department. The assessments shall be apportioned according to each steam
287 distribution company's intrastate operating revenues, to produce an annual amount not greater
288 than \$600,000, as shall be determined and certified annually by the commission as sufficient to
289 reimburse the commonwealth for funds appropriated by the general court for the operation and

290 general administration of the department and for the cost of fringe benefits as established by the
291 commissioner of administration under section 5D of chapter 29, including group life and health
292 insurance, retirement benefits, paid vacations, holidays and sick leave.

293 Each company shall pay the amount assessed against it within 30 days after receipt of
294 the notice of assessment from the department. Such assessments collected by the department
295 shall be credited to the General Fund. Any funds unexpended in any fiscal year for the purposes
296 for which such assessments were made shall be credited against the assessment to be made in
297 the following fiscal year and the assessment in the following fiscal year shall be reduced by any
298 such unexpended amount.

299

300 SECTION 11. Said chapter 25 is hereby further amended by striking out sections 19
301 and 20, as appearing in the 2006 Official Edition, and inserting in place thereof the following 4
302 sections:-

303 Section 19. (a) The department shall require a mandatory charge of 2.5 mills per
304 kilowatt-hour for all consumers, except those served by a municipal lighting plant, to fund
305 energy efficiency programs including, but not limited to, demand side management programs.
306 The programs shall be administered by the electric distribution companies and by municipal
307 aggregators with energy plans certified by the department under subsection (b) of section 134 of
308 chapter 164. In addition to the aforementioned mandatory charge, such programs shall also be
309 funded, without further appropriation, by: (1) amounts generated by the distribution companies
310 and municipal aggregators under the Forward Capacity Market program administered by ISO-
311 NE, as defined in section 1 of chapter 164; and (2) cap and trade pollution control programs,
312 including, but not limited to, and subject to section 22 of chapter 21A, not less than 80 per cent
313 of amounts generated by the carbon dioxide allowance trading mechanism established under the
314 Regional Greenhouse Gas Initiative Memorandum of Understanding, as defined in subsection
315 (a) of section 22 of chapter 21A, and the NOx Allowance Trading Program; and (3) other
316 funding as approved by the department after consideration of: (i) the effect of any rate increases
317 on residential and commercial consumers; (ii) the availability of other private or public funds,
318 utility administered or otherwise, that may be available for energy efficiency or demand
319 resources; and (iii) whether past programs have lowered the cost of electricity to residential and
320 commercial consumers. In authorizing such programs, the department shall ensure that they are

321 delivered in a cost-effective manner capturing all available efficiency opportunities, minimizing
322 administrative costs to the fullest extent practicable and utilizing competitive procurement
323 processes to the fullest extent practicable.

324 (b) The department may approve and fund gas energy efficiency programs proposed by
325 gas distribution companies including, but not limited to, demand side management programs.
326 Energy efficiency activities eligible for funding under this section shall include combined heat
327 and power and geothermal heating and cooling projects. Funding may be supplemented by
328 funds authorized by section 21. The programs shall be administered by the gas distribution
329 companies. In authorizing such programs, the department shall ensure that they are delivered in
330 a cost-effective manner capturing all available efficiency opportunities, minimizing
331 administrative costs to the fullest extent practicable and utilizing competitive procurement
332 processes to the fullest extent practicable.

333 (c) Electric and gas energy efficiency program funds shall be allocated to customer
334 classes, including the low-income residential subclass, in proportion to their contributions to
335 those funds; provided, however, that at least 10 per cent of the amount expended for electric
336 energy efficiency programs and at least 20 per cent of the amount expended for gas energy
337 efficiency programs shall be spent on comprehensive low-income residential demand side
338 management and education programs. The low-income residential demand side management
339 and education programs shall be implemented through the low-income weatherization and fuel
340 assistance program network and shall be coordinated with all electric and gas distribution
341 companies in the commonwealth with the objective of standardizing implementation. Such
342 programs shall be screened only through cost-effectiveness testing which compares the value of
343 program benefits to program costs to ensure that a program is designed to obtain energy savings
344 and system benefits with value greater than the costs of the program.

345 Section 20. (a) The department shall require a mandatory charge of 0.5 mill per
346 kilowatt-hour for all electricity consumers, except those served by a municipal lighting plant
347 which does not supply generation service outside its own service territory or does not open its
348 service territory to competition at the retail level, to support the development and promotion of
349 renewable energy projects. All revenues generated by the mandatory charge shall be deposited
350 into the Massachusetts Renewable Energy Trust Fund, established under section 4E of chapter
351 40J.

352 (b) Notwithstanding any general or special law to the contrary: (1) a municipal lighting
353 plant which does not supply generation service outside its own service territory or does not open
354 its service territory to competition may elect to assess and remit a mandatory charge per
355 kilowatt-hour upon its electricity consumers on the same terms and conditions as apply to the
356 charge imposed on consumers residing in competitive distribution service territories under this
357 section; provided, however, that such an election by a municipal lighting plant shall be
358 irrevocable and such a municipal lighting plant shall not be deemed to be supplying generation
359 service outside its service territory or opening its service territory to competition at the retail
360 level for the purposes of the first sentence of subsection (a); and (2) in administering the
361 Massachusetts Renewable Energy Trust Fund, the Massachusetts Technology Park Corporation,
362 doing business as the Massachusetts Technology Collaborative, or the governing board, as
363 applicable, shall not make any grant or loan or provide any subsidy from the trust fund to any
364 municipal lighting plant or consumer residing in the distribution service territory of such
365 municipal lighting plant unless: (A) a mandatory charge per kilowatt-hour is assessed against all
366 consumers residing in the distribution service territory and remitted to the collaborative under
367 the first sentence of subsection (a) or clause (1); or (B) the board of directors of the
368 collaborative, as a condition precedent to any such grant, loan or subsidy, shall have determined
369 and incorporated into the minutes of its proceedings findings that: (i) any such grant, loan or
370 subsidy is intended for the principal purpose of generating public benefits for those consumers
371 who reside in distribution service territories in which the mandatory charge is so imposed and
372 remitted and will generate only incidental private benefits to the recipient or others residing in a
373 distribution service territory in which the mandatory charge is not so imposed and remitted; and
374 (ii) the facts and circumstances associated with the recipient or the residence of the recipient
375 provide unique or extraordinary opportunities to advance the public purposes of the trust fund
376 over those opportunities available through grants or subsidies made to recipients residing in
377 distribution service territories in which such a mandatory charge is assessed and remitted.

378 Section 21. (a) To mitigate capacity and energy costs for all customers, the department
379 shall ensure that, subject to subsection (c) of section 19, electric and natural gas resource needs
380 shall first be met through all available energy efficiency and demand reduction resources that
381 are cost effective or less expensive than supply. The cost of supply shall be determined by the

382 department with consideration of the average cost of generation to all customer classes over the
383 previous 24 months.

384 (b)(1) Every 3 years, on or before April 30, the electric distribution companies and
385 municipal aggregators with certified efficiency plans shall jointly prepare an electric efficiency
386 investment plan and the natural gas distribution companies shall jointly prepare a natural gas
387 efficiency investment plan. Each plan shall provide for the acquisition of all available energy
388 efficiency and demand reduction resources that are cost effective or less expensive than supply
389 and shall be prepared in coordination with the energy efficiency advisory council established by
390 section 22. Each plan shall provide for the acquisition, with the lowest reasonable customer
391 contribution, of all of the cost effective energy efficiency and demand reduction resources that
392 are available from municipalities and other governmental bodies.

393 (2) A plan shall include: (i) an assessment of the estimated lifetime cost, reliability and
394 magnitude of all available energy efficiency and demand reduction resources that are cost
395 effective or less expensive than supply; (ii) the amount of demand resources, including
396 efficiency, conservation, demand response and load management, that are proposed to be
397 acquired under the plan and the basis for this determination; (iii) the estimated energy cost
398 savings that the acquisition of such resources will provide to electricity and natural gas
399 consumers, including, but not limited to, reductions in capacity and energy costs and increases
400 in rate stability and affordability for low-income customers; (iv) a description of programs,
401 which may include, but which shall not be limited to: (A) efficiency and load management
402 programs; (B) demand response programs; (C) programs for research, development and
403 commercialization of products or processes which are more energy-efficient than those
404 generally available; (D) programs for development of markets for such products and processes,
405 including recommendations for new appliance and product efficiency standards; (E) programs
406 providing support for energy use assessment, real time monitoring systems, engineering studies
407 and services related to new construction or major building renovation, including integration of
408 such assessments, systems, studies and services with building energy codes programs and
409 processes, or those regarding the development of high performance or sustainable buildings that
410 exceed code; (F) programs for the design, manufacture, commercialization and purchase of
411 energy-efficient appliances and heating, air conditioning and lighting devices; (G) programs for
412 planning and evaluation; (H) programs providing commercial, industrial and institutional

413 customers with greater flexibility and control over demand side investments funded by the
414 programs at their facilities; and (I) programs for public education regarding energy efficiency
415 and demand management; provided, however, that not more than 1 per cent of the fund shall be
416 expended for items (C) and (D) collectively, without authorization from the advisory council;
417 (v) a proposed mechanism which provides performance incentives to the companies based on
418 their success in meeting or exceeding the goals in the plan; (vi) the budget that is needed to
419 support the programs; (vii) a fully reconciling funding mechanism which may include, but
420 which shall not be limited to, the charge authorized by section 19; (viii) the estimated amount of
421 reduction in peak load that will be reduced from each option and any estimated economic
422 benefits for such projects, including job retention, job growth or economic development; and
423 (ix) data showing the percentage of all monies collected that will be used for direct consumer
424 benefit, such as incentives and technical assistance to carry the plan. With the approval of the
425 council, the plan may also include a mechanism to prioritize projects that have substantial
426 benefits in reducing peak load, reducing the energy consumption or costs of municipalities or
427 other governmental bodies, or that have economic development, job creation or job retention
428 benefits.

429 (3) A program included in the plan shall be screened through cost-effectiveness testing
430 which compares the value of program benefits to the program costs to ensure that the program is
431 designed to obtain energy savings and system benefits with value greater than the costs of the
432 program. Program cost effectiveness shall be reviewed periodically by the department and by
433 the energy efficiency advisory council. If a program fails the cost-effectiveness test as part of
434 the review process, it shall either be modified to meet the test or shall be terminated.

435 (c) Each plan prepared under subsection (b) shall be submitted for approval and comment by the
436 energy efficiency advisory council every 3 years on or before April 30. The electric and natural
437 gas distribution companies and municipal aggregators shall provide any additional information
438 requested by the council that is relevant to the consideration of the plan. The council shall
439 review the plan and any additional information and shall submit its approval or comments to the
440 electric and natural gas distribution companies and municipal aggregators not later than 3
441 months after submission of the plan. The electric and natural gas distribution companies and
442 municipal aggregators may make any changes or revisions to reflect the input of the council.

443 (d)(1) The electric and natural gas distribution companies and municipal aggregators
444 shall submit their respective plans, together with the council's approval or comments and a
445 statement of any unresolved issues, to the department every 3 years on or before October 31.
446 The department shall consider the plans and shall provide an opportunity for interested parties
447 to be heard in a public hearing.

448 (2) Not later than 90 days after submission of a plan, the department shall issue a
449 decision on the plan which ensures that the electric and natural gas distribution companies have
450 identified and shall capture all energy efficiency and demand reduction resources that are cost
451 effective or less expensive than supply and shall approve, modify and approve, or reject and
452 require the resubmission of the plan accordingly. The department shall approve a fully
453 reconciling funding mechanism for the approved plan and, in the case of municipal aggregators,
454 a fully reconciling funding mechanism that requires coordination between the distribution
455 company and municipal aggregator to ensure that program costs are collected, allocated and
456 distributed in a cost effective, fair and equitable manner. The department shall determine the
457 effectiveness of the plan on an annual basis.

458 (3) Each electric and natural gas plan shall be in effect for 3 years.

459 (e) If an electric or natural gas distribution company or municipal aggregator has not
460 reasonably complied with the plan, the department may open an investigation. In any such
461 investigation, the utility company or aggregator shall have the burden of proof to show whether
462 it had good cause for failing to reasonably comply with the plan. If the utility company or
463 aggregator does not meet its burden, the department may levy a fine of not more than the
464 product of \$0.05 per kilowatt-hour or \$1 per therm times the shortfall of kilowatt-hours saved or
465 therms saved, as applicable, depending upon the facts and circumstances and degree of fault,
466 which shall be paid to the Massachusetts Technology Park Corporation within 60 days after the
467 end of the year in which the department levies the fine. The fine shall not impact ratepayers.
468 The department of energy resources shall oversee the use of the funds held by the Massachusetts
469 Technology Park Corporation under this subsection so as to maximize the amount of energy
470 efficiency achieved.

471 Section 22. (a) The department shall appoint and convene an energy efficiency advisory
472 council which shall consist of 11 members, including 1 person representing each of the
473 following: (1) residential consumers, (2) the low-income weatherization and fuel assistance

474 program network, (3) the environmental community, (4) businesses, including large C&I end-
475 users, (5) the manufacturing industry, (6) energy efficiency experts, (7) organized labor, (8) the
476 department of environmental protection, (9) the attorney general, (10) the executive office of
477 housing and economic development, and (11) the department of energy resources. Interested
478 parties shall apply to the department for designation as members. Members shall serve for
479 terms of 5 years and may be reappointed. The commissioner of energy resources shall serve as
480 chair of the council. A member who is a representative of energy efficiency experts shall not
481 have a contractual relationship with an electric or natural gas distribution company doing
482 business in the commonwealth or any affiliate of such company, or any municipal aggregator.
483 There shall be 1 non-voting, ex-officio member from each of the electric and natural gas
484 distribution companies, 1 from each of the approved municipal aggregators, 1 from the heating
485 oil industry and 1 from energy efficiency businesses.

486 (b) The council shall, as part of the approval process by the department, seek to
487 maximize net economic benefits through energy efficiency and load management resources and
488 to achieve energy, capacity, climate and environmental goals through a sustained and integrated
489 statewide energy efficiency effort. The council shall review and approve demand resource
490 program plans and budgets, work with program administrators in preparing energy resource
491 assessments, determine the economic, system reliability, climate and air quality benefits of
492 efficiency and load management resources, conduct and recommend relevant research, and
493 recommend long term efficiency and load management goals to maximize economic savings
494 and achieve environmental goals. Approval of efficiency and demand resource plans and
495 budgets shall require a two-thirds majority vote. The council shall, as part of its review of
496 plans, examine opportunities to offer joint programs providing similar efficiency measures that
497 save more than 1 fuel resource or to coordinate programs targeted at saving more than one fuel
498 resource. Any costs for joint programs shall be allocated equitably among the efficiency
499 programs.

500 (c) The council may retain expert consultants; provided, however, that such consultants
501 shall not have any contractual relationship with an electric or natural gas distribution company
502 doing business in the commonwealth or any affiliate of such company.

503 The council shall annually submit to the department a proposal regarding the level of
504 funding required for the retention of expert consultants and reasonable administrative costs.

505 The proposal shall be approved by the department either as submitted or as modified by the
506 department. The department shall allocate funds sufficient for these purposes from the natural
507 gas and electric efficiency funding authorized under section 19; provided, however, that such
508 allocation shall not exceed 1 per cent of such funding on an annual basis. The consultants used
509 under this section shall be experts in energy efficiency and shall be independent.

510 (d) The electric and natural gas distribution companies and municipal aggregators shall
511 provide quarterly reports to the council on the implementation of their respective plans. The
512 reports shall include a description of the program administrator's progress in implementing the
513 plan, a summary of the savings secured to date and such other information as the council shall
514 determine. The council shall provide an annual report to the department and the joint
515 committee on telecommunications, utilities and energy on the implementation of the plan which
516 includes descriptions of the programs, expenditures, cost-effectiveness and savings and other
517 benefits during the previous year.

518

519 SECTION 12. Chapter 25A of the General Laws, as so appearing, is hereby amended
520 by striking out sections 1 to 3, inclusive, as amended by section 28 of chapter 19 of the acts of
521 2007, and inserting in place thereof the following 3 sections:-

522 Section 1. There shall be within the executive office of energy and environmental
523 affairs a department called the department of energy resources, under the supervision of a
524 commissioner of energy resources, hereinafter the commissioner. The duties given to the
525 commissioner in this chapter and in any other general or special law shall be exercised and
526 discharged subject to the direction, control and supervision of the secretary of energy and
527 environmental affairs. The commissioner shall be appointed by the secretary of energy and
528 environmental affairs, with the approval of the governor, and may, with like approval, be
529 removed. The commissioner shall be a person of skill and experience in the field of energy
530 regulation or policy and shall serve a term coterminous with that of the governor. The position
531 of commissioner shall be classified in accordance with section 45 of chapter 30 and the salary
532 shall be determined in accordance with section 46C of said chapter 30. The commissioner shall
533 devote full time during business hours to the duties of the office. In the case of an absence or
534 vacancy in the office of the commissioner, or in the case of disability as determined by the
535 secretary, the secretary may designate an acting commissioner to serve as commissioner until

536 the vacancy is filled or the absence or disability ceases. The acting commissioner shall have all
537 the powers and duties of the commissioner and shall have similar qualifications as the
538 commissioner.

539 Section 2. The commissioner shall be the executive and administrative head of the
540 department of energy resources and shall be responsible for administering and enforcing the
541 provisions of law relative to the division and to each administrative unit thereof.

542 There shall be within the department 3 divisions: (i) a division of energy efficiency,
543 which shall work with the department of public utilities regarding energy efficiency programs;
544 (ii) a division of renewable and alternative energy development, which shall oversee and
545 coordinate activities that seek to maximize the installation of renewable and alternative energy
546 generating sources that will provide benefits to ratepayers, advance the production and use of
547 biofuels and other alternative fuels as the division may define by regulation, and administer the
548 renewable portfolio standard and the alternative portfolio standard; and (iii) a division of green
549 communities, which shall serve as the principal point of contact for municipalities and other
550 governmental bodies concerning all matters under the jurisdiction of the department of energy
551 resources. Each division shall be headed by a director who shall be appointed by the
552 commissioner and who shall be a person of skill and experience in the field of energy
553 efficiency, renewable energy or alternative energy, and energy regulation or policy,
554 respectively. The directors shall be the executive and administrative heads of their respective
555 divisions and shall be responsible for administering and enforcing the law relative to such
556 division and to each administrative unit thereof under the supervision, direction and control of
557 the commissioner. The directors shall serve at the pleasure of the commissioner, shall receive
558 such salary as may be determined by law and shall devote full time during business hours to the
559 duties of the office. In the case of an absence or vacancy in the office of the director, or in the
560 case of disability as determined by the commissioner, the commissioner may designate an active
561 director to serve as director until the vacancy is filled or the absence or disability ceases. The
562 acting director shall have all the powers and duties of the director and shall have similar
563 qualifications as the director.

564 The commissioner may, from time to time, subject to appropriation, establish within the
565 department such administrative units as may be necessary for the efficient and economical
566 administration of the department and, when necessary for such purpose, may abolish any such

567 administrative unit, or may merge any 2 or more of them, as the commissioner deems advisable.
568 The commissioner shall prepare and keep current a statement of the organization of the
569 department, of the assignment of its functions to its various administrative units, offices and
570 employees, and of the places at which and the methods whereby the public may receive
571 information or make requests. Such statement shall be known as the department's description of
572 organization. A current copy of the description of organization shall be kept on file in the office
573 of the secretary of state and in the office of the secretary of administration.

574 Section 3. For the purposes of this chapter the following words shall have the following
575 meanings:-

576 "Alternative energy development", shall include but not be limited to solar energy,
577 wood, alcohol, hydroelectric, biomass energy systems, renewable non-depletable and recyclable
578 energy sources.

579 "Alternative energy property", any property powered in whole or in part by the sun,
580 wind, water, biomass, alcohol, wood, or any renewable, non-depletable or recyclable fuel, and
581 property related to the exploration, development, processing, transportation and distribution of
582 the aforementioned energy resources.

583 "Building authority", the University of Massachusetts Building Authority, the State
584 College Building Authority or any other building authority which may be established for similar
585 purposes.

586 "Commissioner", the commissioner of energy resources.

587 "Department", the department of energy resources.

588 "Eligible", able to meet all requirements for offerors or bidders set forth in section 11C
589 or 11I and section 44D of chapter 149 and not barred from bidding under section 44C of said
590 chapter 149 or any other applicable law, and who shall certify that he is able to furnish labor
591 that can work in harmony with all other elements of labor employed or to be employed on the
592 work.

593 "End-user", any individual, corporation, firm or subsidiary of any firm that is an
594 ultimate consumer of petroleum products and which, as part of its normal business practices,
595 purchases or obtains petroleum products from a wholesaler or reseller and receives delivery of
596 that product.

597 “Energy audit”, a determination of the energy consumption characteristics of a building
598 or facility which: (a) identifies the type, size and rate of energy consumption of such building or
599 facility and the major energy using systems of such building or facility; (b) determines
600 appropriate energy conservation maintenance and operating procedures; and (c) indicates the
601 need, if any, for the acquisition and installation of energy conservation measures or alternative
602 energy property.

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

607 “Energy conservation measures”, measures involving modifications of maintenance and
608 operating procedures of a building or facility and installations therein, which are designed to
609 reduce energy consumption in such building or facility, or the installation or modification of an
610 installation in a building or facility which is primarily intended to reduce energy consumption;

611 “Energy conservation projects”, projects to promote energy conservation, including but
612 not limited to energy conserving modification to windows and doors; caulking and
613 weatherstripping; insulation, automatic energy control systems; hot water systems; equipment
614 required to operate variable steam, hydraulic and ventilating systems; plant and distribution
615 system modifications, including replacement of burners, furnaces or boilers; devices for
616 modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system
617 conversions; replacement or modification of lighting fixtures; energy recovery systems; on-site
618 electrical generation equipment using new renewable generating sources as defined in section
619 11F; and cogeneration systems;

620 “Energy management services”, a program of services, including energy audits, energy
621 conservation measures, energy conservation projects or a combination thereof, and building
622 maintenance and financing services, primarily intended to reduce the cost of energy and water
623 in operating buildings, which may be paid for, in whole or in part, by cost savings attributable to
624 a reduction in energy and water consumption which result from such services.

625 “Energy savings”, a measured reduction in fuel, energy, operating or maintenance costs
626 resulting from the implementation of energy conservation measures or projects; provided,
627 however, that any payback analysis to evaluate the energy savings of a geothermal energy

628 system to provide heating, cooling or water heating over its expected lifespan shall include gas
629 and electric consumption savings, maintenance savings and shall use an average escalation rate
630 based on the most recent information for gas and electric rates compiled by the Energy
631 Information Administration of the United States Department of Energy.

632 “Local governmental body”, a city, town, district, regional school district or county, or
633 an agency or authority thereof, including a housing authority, board, commission, department or
634 instrumentality of a city, town district, regional school district or county, and any other agency
635 which is not a state agency or building authority; or a combination of 2 or more such cities,
636 towns, districts, regional school districts or counties, or agencies or authorities thereof.

637 “Marine or hydrokinetic energy”, electrical energy from: (a) waves, tides and currents in
638 oceans, estuaries and tidal areas; (b) free-flowing water in rivers, lakes and streams; (c) free-
639 flowing water in man-made channels; or (d) differentials in ocean temperature, called ocean
640 thermal energy conversion.

641 “Minor informalities”, minor deviations, insignificant mistakes and matters of form
642 rather than substance of the proposal or contract document which may be waived or corrected
643 without prejudice to other offerors, potential offerors or the public agency.

644 “Non-renewable energy supply and resource development”, shall include but not be
645 limited to gasoline, natural gas, coal, nuclear energy, offshore and onshore petroleum, and
646 facilities related to the exploration, development, processing, transportation and distribution of
647 such resources and programs established for the allocation of supplies of such resources and the
648 development of supply shortage contingency plans.

649 “Person”, any natural person, business, partnership, corporation, union, committee, club,
650 or other organization, entity or group of individuals.

651 “Petroleum products”, propane, gasoline, unleaded gasoline, kerosene, #2 heating oil,
652 diesel fuel, kerosene base jet fuel, and #4, 5, and 6 residual oil for utility and non-utility uses,
653 and all petroleum derivatives, whether in bond or not, which are commonly burned to produce
654 heat, power, electricity or motion or which are commonly processed to produce synthetic gas
655 for burning.

656 “Qualified provider”, responsible and eligible person able to meet all requirements set
657 forth in section 11C or 11I, and not barred from bidding under section 44C of chapter 149 or

658 any other applicable law and experienced in the design, implementation and installation of
659 energy savings measures.

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

663 “Responsible”, demonstrably possessing the skill, ability and integrity necessary to
664 faithfully perform the work required by a particular contract, based upon a determination of
665 competent workmanship and financial soundness in accordance with section 11C or 11I and
666 section 44D of chapter 149.

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

669 “State agency”, any agency, authority, board, bureau, commission, committee, council,
670 department, division, institution, officer or other agency of the commonwealth, including quasi-
671 public agencies.

672 “Wholesaler”, any person, corporation, firm or any part or subsidiary of any firm which
673 supplies, sells, transfers or otherwise furnishes petroleum products to resellers or end-users.

674

675 SECTION 13. Section 5 of said chapter 25A, as appearing in the 2006 Official Edition,
676 is hereby amended by striking out the first sentence and inserting in place thereof the following
677 sentence:- The commissioner shall file an annual report with the clerks of the senate and the
678 house of representatives, the joint committee on telecommunications, utilities and energy and
679 the senate and house committees on ways and means: (a) listing the number of employees of the
680 department of energy resources, the salaries and titles of each employee, the source of funding
681 for the salaries of said employees and the projected date when federal funds for such positions
682 are expected to terminate; (b) listing and describing grant programs of the department funded by
683 the federal government, including the amount of funding by grant; (c) listing and describing
684 other programs of the department, including the amount and source of funding by program; and
685 (d) describing the energy audit, energy conservation and alternative energy bond programs by
686 categories of projects, prospective grantees under each category, if known, and amounts to be
687 spent by category and grantee.

688

689 SECTION 14. Section 6 of said chapter 25A, as so appearing, is hereby amended by
690 striking out, in line 1, the words “division of energy resources” and inserting in place thereof the
691 following word:- department.

692

693 SECTION 15. Said section 6 of said chapter 25A, as so appearing, is hereby further
694 amended by striking out, in line 38, the words “telecommunications and energy” and inserting
695 in place thereof the following words:- public utilities.

696

697 SECTION 16. Section 7 of said chapter 25A, as so appearing, is hereby amended by
698 striking out, in lines 1, in lines 21 and 22, and in line 29, the words “division of energy
699 resources” and inserting in place thereof, in each instance, the following word:- department.

700

701 SECTION 17. Said section 7 of said chapter 25A, as so appearing, is hereby further
702 amended by striking out, in lines 8, 22, 30, 32, 39, 49 and 50 the word “division” each time it
703 appears, and inserting in place thereof the following word:- department.

704

705 SECTION 18. Said section 7 of said chapter 25A, as so appearing, is hereby further
706 amended by striking out, in line 40, the words “telecommunications and energy” and inserting
707 in place thereof the following words:- public utilities.

708

709 SECTION 19. Section 8 of said chapter 25A, as so appearing, is hereby amended by
710 striking out, in line 12, the word “division of energy resources” and inserting in place thereof
711 the following word:- department.

712

713 SECTION 20. Section 9 of said chapter 25A, as so appearing, is hereby amended by
714 striking out, in line 2 the words “of energy resources”.

715

716 SECTION 21. Said section 9 of said chapter 25A, as so appearing, is hereby amended
717 by striking out, in lines 9 and 10, the word “division of energy resources” and inserting in place
718 thereof the following word:- department.

719

720 SECTION 22. Said chapter 25A is hereby amended by striking out section 10, as so
721 appearing, and inserting in place thereof the following 2 sections:-

722 Section 10. (a) The division of green communities shall assist the commonwealth's
723 municipalities and other local governmental bodies to: reduce energy consumption and costs,
724 reduce pollution, facilitate the development of renewable and alternative energy resources, and
725 create local jobs related to the building of renewable and alternative energy facilities and the
726 installation of energy-efficient equipment. The director of the division shall be responsible for
727 the administration and oversight of the green communities program and shall apply and disburse
728 monies and revenues as provided in this section.

729 (b) The division shall establish a green communities program. The purpose of the
730 program shall be to provide technical and financial assistance, in the form of grants and loans,
731 to municipalities and other local governmental bodies that qualify as green communities under
732 this section. These loans and grants shall be used to finance all or a portion of the costs of
733 studying, designing, constructing and implementing energy efficiency activities, including but
734 not limited to, energy conservation measures and projects; procurement of energy management
735 services; installation of energy management systems; adoption of demand side reduction
736 initiatives; and the adoption of energy efficiency policies. They shall also be used to finance the
737 siting and construction of renewable and alternative energy projects on municipally-owned land.

738 (c) To qualify as a green community, a municipality or other local governmental body
739 shall: (1) file an application with the division in a form and manner to be prescribed by the
740 division; (2) provide for the as-of-right siting of renewable or alternative energy generating
741 facilities, renewable or alternative energy research and development facilities, or renewable or
742 alternative energy manufacturing facilities in designated locations; (3) adopt an expedited
743 application and permitting process under which these energy facilities may be sited within the
744 municipality and which shall not exceed 1 year from the date of initial application to the date of
745 final approval; (4) establish an energy use baseline inventory for municipal buildings, vehicles
746 and street and traffic lighting, and put in place a comprehensive program designed to reduce this
747 baseline by 20 per cent within 5 years of initial participation in the program; (5) purchase only
748 fuel-efficient vehicles for municipal use whenever such vehicles are commercially available and
749 practicable; and (6) require all new residential construction over 3,000 square feet and all new

750 commercial and industrial real estate construction to minimize, to the extent feasible, the life-
751 cycle cost of the facility by utilizing energy efficiency, water conservation and other renewable
752 or alternative energy technologies. The secretary may waive these requirements based on a
753 written finding that due to unusual circumstances, a municipality cannot reasonably meet all of
754 the requirements and the municipality has committed to alternative measures that advance the
755 purposes of the green communities program as effectively as adherence to the requirements.

756 (d) Funding for the green communities program in any single fiscal year shall be
757 available, without the need for further appropriation, in a total amount of not more than \$10
758 million from: (1) monies generated by all cap and trade pollution control programs, including,
759 but not limited to, the cap and trade program established under the NOx Allowance Trading
760 Program and the carbon dioxide allowance trading mechanism established under the Regional
761 Greenhouse Gas Initiative, as defined in subsection (a) of section 22 of chapter 164; (2) such
762 amounts as may be directed to municipalities or other governmental bodies under section 19 of
763 chapter 25; (3) amounts from alternative compliance payments established and administered
764 under 225 CMR 14.00 adopted under section 11F; and (4) other funds as the governing board
765 of the Massachusetts Renewable Energy Trust Fund established under section 4E of chapter
766 40J, may provide.

767 (e) The division shall adopt rules, regulations and guidelines for the administration and
768 enforcement of this section, including, but not limited to, establishing applicant criteria, funding
769 priority, application forms and procedures, and energy efficiency product requirements. The
770 division shall also adopt regulations providing for a separate green communities program for
771 those communities served by municipal lighting plants that have chosen to adopt the renewable
772 energy charge under section 20 of chapter 25.

773 (f) The division shall annually, not later than April 1, submit a report to the clerks of the
774 senate and the house of representatives, the joint committee on telecommunications, utilities and
775 energy, the joint committee on state administration and regulatory oversight, and the senate and
776 house committees on ways and means detailing the expenditures and results relative to the green
777 communities program.

778 Section 10A. The division shall design and implement a competitive bidding procedure
779 for the procurement of electric generation from renewable and alternative generating facilities
780 on behalf of municipalities certified as green communities under section 10. Any competitive

781 bids received shall include payment options with rates that remain uniform for a minimum of 5
782 years. In lieu of designing and implementing a competitive bidding process as required by this
783 section, the director may become a member of programs organized and administered by the
784 Health and Educational Facilities Authority or its subsidiary organization for the purpose of
785 such competitive group purchasing of electricity.

786

787 SECTION 23. Said chapter 25A is hereby further amended striking out section 11C, as
788 so appearing, and inserting in place thereof the following section:-

789 Section 11C. (a) A state agency or building authority may, in the manner provided by
790 this section, contract for the procurement of energy management services. Such contracts may
791 include terms of not more than 20 years. The state agency or building authority shall solicit
792 competitive sealed proposals through a request for proposals. At least 1 week prior to soliciting
793 proposals for a contract under this section, the agency or authority shall notify the commissioner
794 in writing, in such form and including such information as the commissioner shall prescribe by
795 regulation, of the intent to solicit proposals. Such notification shall, at a minimum, include a
796 complete copy of the request for proposals. An acknowledgment of receipt, in such form and
797 including such information as the commissioner shall prescribe by regulation, shall be issued to
798 the state agency or building authority upon successful compliance with the requirements of this
799 paragraph.

800 Requests for proposals for an energy management services contract to be entered into on
801 behalf of a state agency or a building authority, except a quasi-public agency, shall be
802 developed jointly by the division of capital asset management and maintenance and the using
803 agency. Such proposals shall only be solicited by the division of capital asset management and
804 maintenance after the commissioner of the division has given prior written approval, and no
805 contract for energy management services shall be valid unless approved and signed by that
806 commissioner. A quasi-public agency may develop a request for proposal and enter into a
807 contract for energy management services independently. The commissioner of capital asset
808 management and maintenance may delegate to state agencies and building authorities the
809 authority to enter into such contracts with an estimated construction cost of less than \$1 million.
810 The delegation shall be in writing from the commissioner to the using agency or building
811 authority.

812 The request for proposals published by a state agency or building authority shall include:
813 (1) the time and date for receipt of proposals and the address of the office to which the
814 proposals shall be delivered; (2) a description of the services to be procured, including specific
815 requirements and all evaluation criteria that will be utilized by the state agency or building
816 authority; and (3) proposed contract terms and conditions and an identification of such terms
817 and conditions which shall be deemed mandatory and non-negotiable. The request for proposals
818 may incorporate documents by reference, provided that the request for proposals specifies
819 where prospective offerors may obtain the documents. The state agency or building authority
820 shall make copies of the request for proposals available to all persons on an equal basis. Public
821 notice of the request for proposals shall conform to the procedures set forth in subsection (1) of
822 section 44J of chapter 149. Proposals shall be opened publicly, in the presence of 2 or more
823 witnesses, at the time specified in the request for proposals, and shall be available for public
824 inspection.

825 Sections 44A, 44B and 44E through 44H, inclusive, of chapter 149 shall not apply to
826 contracts procured under this section. Section 44D of chapter 149 shall apply as appropriate to
827 proposals submitted for contracts under this section, and every such proposal shall be
828 accompanied by: (1) a copy of a certificate of eligibility issued by the commissioner of the
829 division of capital asset management and maintenance; and (2) an update statement. The
830 offeror's qualifications shall be evaluated by the division of capital asset management and
831 maintenance in a manner designated by the commissioner of that division. If the state agency or
832 building authority determines that any offeror is not responsible or eligible, the agency or
833 authority shall reject the offeror, and shall give written notice of such action to the division of
834 capital asset management and maintenance.

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

838 Payments under a contract for energy management services may be based in whole or in
839 part on any cost savings attributable to a reduction in energy and water consumption due to the
840 contractor's performance or revenues gained due to the contractor's services which are aimed at
841 energy and water cost savings.

842 (b) A local governmental body may, in the manner provided in this subsection, contract
843 for the procurement of energy management services. Unless no other manner of description
844 suffices, and the local governmental body so determines in writing, setting forth the basis for the
845 determination, all requirements shall be written in a manner which describes the requirements to
846 be met without having the effect of exclusively requiring a proprietary supply or service, or a
847 procurement from a sole source.

848 Subject to a local governmental body's authority to reject, in whole or in part, any and all
849 proposals, as provided in this section, a local governmental body shall unconditionally accept a
850 proposal without alteration or correction, except as provided in this paragraph. An offeror may
851 correct, modify or withdraw a proposal by written notice received in the office designated in the
852 request for proposals prior to the time and date set for opening the proposals. After proposal
853 opening, an offeror may not change any provisions of the proposal in a manner prejudicial to the
854 interests of the local governmental body or fair competition. The local governmental body shall
855 waive minor informalities or allow the offeror to correct them. If a mistake and the intended
856 meaning of the proposal are clearly evident on the face of the proposal document, the local
857 governmental body shall correct the mistake to reflect the intended meaning and so notify the
858 offeror in writing, and the offeror may not withdraw the proposal. An offeror may withdraw a
859 proposal if a mistake is clearly evident on the face of the proposal but the intended meaning is
860 not similarly evident.

861 The local governmental body shall evaluate each proposal and award each contract
862 based solely on the criteria set forth in the request for proposals. Such criteria shall include, but
863 not be limited to, all standards by which the local governmental body shall evaluate
864 responsiveness, responsibility, qualifications of the offeror, technical merit and cost to the local
865 governmental body. The request for proposals shall specify the method for comparing
866 proposals to determine the proposal offering the lowest overall cost to the local governmental
867 body, taking into consideration comprehensiveness of services, energy or water cost savings,
868 costs to be paid by the local governmental body, and revenues to be paid to the local
869 governmental body. If the local governmental body awards the contract to an offeror who did
870 not submit the proposal offering the lowest overall cost, the governmental body shall explain the
871 reason for the award in writing.

872 The evaluations shall specify revisions, if needed, to each proposal which should be
873 obtained by negotiation before the contract shall be awarded to the offeror of the proposal. The
874 local governmental body may condition an award on successful negotiation of the revisions
875 specified in the evaluation and shall explain in writing the reasons for omitting any such
876 revision from a plan incorporated by reference in the contract.

877 (c) The state agency, building authority or local governmental body may cancel a
878 request for proposals or may reject in whole or in part any and all proposals when the state
879 agency, building authority or local governmental body determines that cancellation or rejection
880 serves the best interests of the state agency, building authority or local governmental body. The
881 state agency, building authority or local governmental body shall state in writing the reason for
882 a cancellation or rejection. The state agency, building authority or local governmental body
883 shall promptly publish in the central register notice of the offeror awarded the contract. The
884 state agency, building authority or local governmental body shall, within 30 days, file a copy of
885 the contract with the commissioner.

886 The commissioner, in consultation with the commissioner of capital asset management
887 and maintenance, shall adopt regulations for the procurement of energy management services
888 under this section for local government bodies. The commissioner of capital asset management
889 and maintenance shall adopt regulations for services to be procured for state agencies and
890 building authorities, and shall adopt regulations, in consultation with the director of housing and
891 community development, for the operations of housing authorities. Such regulations may limit
892 the scope of services procured and the duration of contracts, and shall include any requirements
893 that the commissioner or the commissioner of capital asset management and maintenance deems
894 necessary to promote prudent management of such contracts at the appropriate facilities. Such
895 regulations shall require the submission, at least annually, of such information as the
896 commissioner or the commissioner of capital asset management and maintenance may deem
897 necessary to monitor the costs and benefits of contracts for energy management services.

898 (d) The commissioner shall enforce the requirements of this section and regulations
899 adopted hereunder as they relate to local governmental bodies and shall have all the necessary
900 powers to require compliance. The commissioner of capital asset management and maintenance
901 shall enforce all such regulations as they relate to state agencies and building authorities, except
902 quasi-public agencies. An order of the commissioner under this subsection shall be effective and

903 may be enforced according to its terms, and enforcement thereof shall not be suspended or
904 stayed by the entry of an appeal therefrom. The superior court for Suffolk county shall have
905 jurisdiction over appeals of orders of the commissioner under this subsection, and shall also
906 have jurisdiction upon application of the commissioner to enforce all orders of the
907 commissioner under this subsection. The burden of proof shall be upon the appealing party to
908 show that an order of the commissioner is invalid. An aggrieved person shall not be required to
909 seek an order from the commissioner as a condition precedent to seeking any other remedy.

910
911 SECTION 24. Section 11D of said chapter 25A, as so appearing, is hereby amended by
912 striking out, in lines 25, 39, 44 and 45, 52, 56, 60 and 62, the word “division” and inserting in
913 place thereof, in each instance, the following words:- department.

914
915 SECTION 25. Said section 11D of said chapter 25A, as so appearing, is hereby further
916 amended by striking out, in lines 30, 39 and 47, the words “telecommunications and energy”
917 and inserting in place thereof the following words:- public utilities.

918
919 SECTION 26. Said section 11D of said chapter 25A, as so appearing, is hereby further
920 amended by inserting after the word “department”, in lines 34 and 51, the following words:- of
921 public utilities.

922
923 SECTION 27. Said section 11D of said chapter 25A, as so appearing is hereby further
924 amended by striking out, in line 56, the words “government regulations”, and inserting in place
925 thereof the following words:- telecommunications, utilities and energy.

926
927 SECTION 28. Section 11E of said chapter 25A, as so appearing, is hereby amended by
928 striking out, in line 1, the words “division of energy resources” and inserting in place thereof the
929 following word:- department.

930
931 SECTION 29. Said section 11E of said chapter 25A, as so appearing, is hereby further
932 amended by striking out, in lines 3 and 4, and in lines 7, 9, 13, 16, 20, 23 and 45, the word
933 “division” and inserting in place thereof, in each instance, the following word:- department.

934

935 SECTION 30. Said section 11E of said chapter 25A, as so appearing, is hereby further
936 amended by striking out, in lines 7, 10 and 43, the words “telecommunications and energy” and
937 inserting in place thereof, in each instance, the following words:- public utilities.

938

939 SECTION 31. Said section 11E of said chapter 25A, as so appearing, is hereby further
940 amended by striking out, in line 46, the words “committees on government regulations and
941 energy, respectively,” and inserting in place thereof the following words:- committee on
942 telecommunications, utilities and energy.

943

944 SECTION 32. Said chapter 25A is hereby further amended by striking out section 11F,
945 as so appearing, and inserting in place thereof the following 2 sections:-

946

947 Section 11F. (a) The department shall establish a renewable energy portfolio standard
948 for all retail electricity suppliers selling electricity to end-use customers in the commonwealth.
949 By December 31, 1999, the department shall determine the actual percentage of kilowatt-hours
950 sales to end-use customers in the commonwealth which is derived from existing renewable
951 energy generating sources. Every retail supplier shall provide a minimum percentage of
952 kilowatt-hours sales to end-use customers in the commonwealth from new renewable energy
953 generating sources, according to the following schedule: (1) an additional 1 per cent of sales by
954 December 31, 2003, or 1 calendar year from the final day of the first month in which the
955 average cost of any renewable technology is found to be within 10 per cent of the overall
956 average spot-market price per kilowatt-hour for electricity in the commonwealth, whichever is
957 sooner; (2) an additional one-half of 1 per cent of sales each year thereafter until December 31,
958 2009; and (3) an additional 1 per cent of sales every year thereafter. For the purpose of this
959 subsection, a new renewable energy generating source is one that begins commercial operation
960 after December 31, 1997, or that represents an increase in generating capacity after December
961 31, 1997, at an existing facility. Commencing on January 1, 2009, such minimum percentage
962 requirement shall be known as the “Class I” renewable energy generating source requirement.

963

964 (b) For the purposes of this subsection, a renewable energy generating source is one
which generates electricity using any of the following: (1) solar photovoltaic or solar thermal

965 electric energy; (2) wind energy; (3) ocean thermal, wave or tidal energy; (4) fuel cells utilizing
966 renewable fuels; (5) landfill gas; (6) waste-to-energy which is a component of conventional
967 municipal solid waste plant technology in commercial use; (7) naturally flowing water and
968 hydroelectric; (8) low emission advanced biomass power conversion technologies using fuels
969 such as wood, by-products or waste from agricultural crops, food or animals, energy crops,
970 biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or
971 algae; or (9) geothermal energy; provided, however, that the calculation of a percentage of
972 kilowatt-hours sales to end-use customers in the commonwealth from new renewable generating
973 sources shall exclude clauses (6) and (7). The department may also consider any previously
974 operational biomass facility retrofitted with advanced conversion technologies as a renewable
975 energy generating source. A renewable energy generating source may be located behind the
976 customer meter within the ISO-NE, as defined in section 1 of chapter 164, control area if the
977 output is verified by an independent verification system participating in the New England Power
978 Pool Generation Information System, in this section called NEPOOL GIS, accounting system
979 and approved by the department.

980 (c) New renewable energy generating sources meeting the requirements of this
981 subsection shall be known as Class I renewable energy generating sources. For the purposes of
982 this subsection, a Class I renewable energy generating source is one that began commercial
983 operation after December 31, 1997, or represents the net increase from incremental new
984 generating capacity after December 31, 1997 at an existing facility, where the facility generates
985 electricity using any of the following: (1) solar photovoltaic or solar thermal electric energy; (2)
986 wind energy; (3) ocean thermal, wave or tidal energy; (4) fuel cells utilizing renewable fuels;
987 (5) landfill gas; (6) energy generated by new hydroelectric facilities, or incremental new energy
988 from increased capacity or efficiency improvements at existing hydroelectric facilities;
989 provided, however, that (i) each such new facility or increased capacity or efficiency at each
990 such existing facility must meet appropriate and site-specific standards that address adequate
991 and healthy river flows, water quality standards, fish passage and protection measures and
992 mitigation and enhancement opportunities in the impacted watershed as determined by the
993 department in consultation with relevant state and federal agencies having oversight and
994 jurisdiction over hydropower facilities; (ii) only energy from new facilities having a capacity up
995 to 25 megawatts or attributable to improvements that incrementally increase capacity or

996 efficiency by up to 25 megawatts at an existing hydroelectric facility shall qualify; and (iii) no
997 such facility shall involve pumped storage of water or construction of any new dam or water
998 diversion structure constructed later than January 1, 1998; (7) low emission advanced biomass
999 power conversion technologies using fuels such as wood, by-products or waste from agricultural
1000 crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to
1001 biodiesel, organic refuse-derived fuel, or algae; (8) marine or hydrokinetic energy as defined in
1002 section 3; or (9) geothermal energy. A Class I renewable generating source may be located
1003 behind the customer meter within the ISO-NE control area if the output is verified by an
1004 independent verification system participating in the NEPOOL GIS accounting system and
1005 approved by the department.

1006 *[The following subsection was changed via an errata sheet received from the committee of conference prior to*
1007 *acceptance of the report.]*

1008 (d) Every retail electric supplier providing service under contracts executed or extended
1009 on or after January 1, 2009, shall provide a minimum percentage of kilowatt-hour sales to end-
1010 use customers in the commonwealth from Class II renewable energy generating sources. For the
1011 purposes of this section, a Class II renewable energy generating source is one that began
1012 commercial operation before December 31, 1997 and generates electricity using any of the
1013 following: (1) solar photovoltaic or solar thermal electric energy; (2) wind energy; (3) ocean
1014 thermal, wave or tidal energy; (4) fuel cells utilizing renewable fuels; (5) landfill gas; (6) energy
1015 generated by existing hydroelectric facilities, provided that such existing facility shall meet
1016 appropriate and site-specific standards that address adequate and healthy river flows, water
1017 quality standards, fish passage and protection measures and mitigation and enhancement
1018 opportunities in the impacted watershed as determined by the department in consultation with
1019 relevant state and federal agencies having oversight and jurisdiction over hydropower facilities;
1020 and provided further, that only energy from existing facilities up to 5 megawatts shall be
1021 considered renewable energy and no such facility shall involve pumped storage of water nor
1022 construction of any new dam or water diversion structure constructed later than January 1, 1998;
1023 (7) waste-to-energy which is a component of conventional municipal solid waste plant
1024 technology in commercial use; (8) low emission advanced biomass power conversion
1025 technologies using fuels such as wood, by-products or waste from agricultural crops, food or
1026 animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic

1027 refuse-derived fuel, or algae; (9) marine or hydrokinetic energy as defined in section 3; or (10)
1028 geothermal energy. A facility in clause (7) shall not be a Class II renewable generating source
1029 unless it operates or contracts for one or more recycling programs approved by the department
1030 of environmental protection. At least 50 per cent of any revenue received by the facility
1031 through the sale of Massachusetts RPS-eligible renewable energy certificates shall be allocated
1032 to such recycling programs. A Class II renewable generating source may be located behind the
1033 customer meter within the ISO-NE control area provided that the output is verified by an
1034 independent verification system participating in the NEPOOL GIS accounting system and
1035 approved by the department.

1036 (e) Every retail supplier shall annually provide to end-use customers in the
1037 commonwealth generation attributes from Class II energy facilities in an amount approved by
1038 the department; provided, however, that the department shall specify that a certain percentage of
1039 these requirements shall be met through energy generated from a specific technology or fuel
1040 type in subsection (d). Such minimum percentage requirement for kilowatt-hour sales from
1041 Class II energy generating sources may be adjusted by the department as necessary to promote
1042 the continued operation of existing energy generating resources that meet the requirements of
1043 said subsection (d), and may be met through kilowatt-hour sales to end-use customers from any
1044 energy generating source meeting the requirements of said subsection (d).

1045 (f) After conducting administrative proceedings, the department may add technologies or
1046 technology categories to any list; provided, however, that the following technologies shall not
1047 be considered renewable energy supplies: coal, oil, natural gas and nuclear power. The
1048 department shall establish and maintain regulations allowing for a retail supplier to discharge its
1049 obligations under this section by making an alternative compliance payment in an amount
1050 established by the department for Class I and Class II renewable energy generating sources.
1051 The department shall establish and maintain regulations outlining procedures by which each
1052 retail supplier shall annually submit for the department's review a filing illustrating the retail
1053 supplier's compliance with the requirements of this section.

1054 (g) In satisfying its annual obligations under subsection (a), each retail supplier shall
1055 provide a portion of the required minimum percentage of kilowatt-hours sales from new on-site
1056 renewable energy generating sources located in the commonwealth and having a power
1057 production capacity of not more than 2 megawatts which began commercial operation after

1058 December 31, 2007, including, but not limited to, behind the meter generation and other similar
1059 categories of generation determined by the department. The portion of the required minimum
1060 percentage required to be supplied by such on-site renewable energy generating sources shall be
1061 established by the department; provided, however, that the department may specify that a
1062 certain percentage of these requirements shall be met through energy generated from a specific
1063 technology or fuel type.

1064 (h) The department shall adopt regulations allowing for a retail supplier to discharge its
1065 obligations under subsection (g) by making an alternative compliance payment in an amount
1066 established by the department; provided, however, that the department shall set on-site
1067 generation alternative compliance payment rates at levels that shall stimulate the development
1068 of new on-site renewable energy generating sources.

1069 (i) A municipal lighting plant shall be exempt from the obligations under this section so
1070 long as and insofar as it is exempt from the requirements to allow competitive choice of
1071 generation supply under section 47A of chapter 164.

1072 Section 11F1/2. (a) The department shall establish an alternative energy portfolio
1073 standard for all retail electricity suppliers selling electricity to end-use customers in the
1074 commonwealth. Every retail electric supplier providing service under contracts executed or
1075 extended on or after January 1, 2009 shall provide a minimum percentage of kilowatt-hour
1076 sales, as determined by the department, to end-use customers in the commonwealth from
1077 alternative energy generating sources and the department shall annually thereafter determine the
1078 minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth which
1079 shall be derived from alternative energy generating sources. For the purposes of this section, an
1080 alternative energy generating source is one which generates electricity using any of the
1081 following: (1) gasification with capture and permanent sequestration of carbon dioxide;
1082 provided, however, that the fuel shall be purchased by, and contractually transported to, the
1083 alternative energy generating source in ISO-NE, as defined in section 1 of chapter 164; (2)
1084 combined heat and power; (3) flywheel energy storage; (4) any facility which substitutes any
1085 portion of its fossil fuel source with an equal to or greater portion of an alternative, paper-
1086 derived fuel source approved by the department of environmental protection through a
1087 beneficial use determination for the production of heat or power; (5) energy efficient steam
1088 technology; or (6) any other alternative energy technology approved by the department under an

1089 administrative proceeding conducted under chapter 30A; provided, however, that the following
1090 technologies shall not be considered alternative energy supplies: coal, except when used in
1091 gasification; petroleum coke, except when used in gasification; oil; natural gas, except when
1092 used in gasification or combined heat and power; and nuclear power.

1093 (b) The department, in consultation with the department of environmental protection,
1094 shall set: (1) emission performance standards, including standards for carbon dioxide emissions,
1095 permanent sequestration definitions and standards, and fuel conversion efficiency standards for
1096 all technologies included in this section such that in the case of gasification, the total overall
1097 fuel conversion efficiency from feedstock to final combustible fuel shall not be less than 70 per
1098 cent, consistent with the commonwealth's environmental goals, including, but not limited to, the
1099 reduction of greenhouse gas emissions; and (2) a net carbon dioxide emissions rate not to
1100 exceed the average emissions rate of existing natural gas plants in the commonwealth, which
1101 shall include all emissions related to combustion, gasification, fuel processing and
1102 sequestration, whether or not such activities occur at the alternative generating source or at
1103 another location, and in the case of combined heat and power shall also include thermal
1104 delivery. At least once every 2 years the department shall review and update all standards for
1105 new alternative energy generating sources to strengthen them, as appropriate, as technology
1106 improvements occur.

1107 (c) The department shall adopt regulations allowing for a retail supplier to discharge its
1108 obligations under this section by making an alternative compliance payment in an amount
1109 established by the department. Such regulations shall outline procedures by which each retail
1110 supplier shall annually submit for the department's review a filing illustrating the retail
1111 supplier's compliance with the requirements of this section.

1112 (d) A municipal lighting plant shall be exempt from the obligations under this section so
1113 long as and insofar as it is exempt from the requirements to allow competitive choice of
1114 generation supply under section 47A of chapter 164.

1115

1116 SECTION 33. Section 11G of said chapter 25A, as so appearing, is hereby amended by
1117 striking out, in lines 1, 3 and 11, the word "division" and inserting in place thereof, in each
1118 instance, the following word:- department.

1119

1120 SECTION 34. Said section 11G of said chapter 25A, as so appearing, is hereby further
1121 amended by inserting after the word “department”, in lines 13 and 14, the following words:- of
1122 public utilities.

1123
1124 SECTION 35. Said section 11G of said chapter 25A, as so appearing, is hereby further
1125 amended by striking out the last 2 sentences and inserting in place thereof the following
1126 sentence:- The department shall adopt rules and regulations necessary to implement this section.

1127
1128 SECTION 36. Section 11H of said chapter 25A, as so appearing, is hereby amended by
1129 striking out, in lines 1, 6, 12 and 31, the word “division” and inserting in place thereof, in each
1130 instance, the following word:- department.

1131
1132 SECTION 37. Said chapter 25A is hereby amended by striking out section 11I and
1133 inserting in place thereof the following section:-

1134 Section 11I. (a) A state agency, local governmental body or building authority may use
1135 this section in the procurement of energy management services as an alternative to the
1136 procedures in section 11C. Nothing in this section shall preclude any such agency, body or
1137 authority from proceeding under section 11C.

1138 (b) An agency, local governmental body or building authority may enter into an energy
1139 management services contract in order to achieve energy savings at facilities in accordance with
1140 this section. All energy savings measures under the contract shall comply with current local,
1141 state and federal construction and environmental codes and regulations.

1142 (c) Before entering into an energy management services contract, a state agency, local
1143 governmental body or building authority shall issue a request for qualifications. Public notice of
1144 the request for qualifications shall conform to the procedures set forth in subsection (1) of
1145 section 44J of chapter 149. At least 1 week before soliciting a request for qualifications for an
1146 energy management services contract, an agency, body or authority body shall notify the
1147 commissioner in writing, in a form and including information as the commissioner of capital
1148 asset management and maintenance shall prescribe by regulation, of the entity’s intent to solicit
1149 qualifications. The notification, at a minimum, shall include a copy of the request for

1150 qualifications. An acknowledgment of receipt, in a form and including information as the
1151 commissioner of capital asset management and maintenance shall prescribe by regulation, shall
1152 be issued by the commissioner to the agency, body or authority upon compliance with the
1153 requirements of this subsection.

1154 The request for qualifications published by a state agency, local governmental body or
1155 building authority shall include the following: (1) the name and address of the agency, body or
1156 authority; (2) The name, address, title and phone number of a contact person; (3) the date, time
1157 and place where qualifications shall be received; (4) a description of the services to be procured,
1158 including a facility profile with a detailed description of each building involved and accurate
1159 energy consumption data for the most recent 2-year period, stated objectives for the program, a
1160 list of building improvements to be considered or required and a statement as to whether the
1161 proposed improvements will generate sufficient energy savings to fund the full cost of the
1162 program; (5) the evaluation criteria for assessing the qualifications; (6) a statement that the
1163 agency, body or authority may cancel the request for qualifications, or may reject in whole or in
1164 part any and all energy savings measures, when it determines that cancellation or rejection
1165 serves the best interests of the public; and (7) any other stipulations and clarifications the
1166 agency, body or authority may require, which shall be clearly identified in the request for
1167 qualifications.

1168 Qualifications shall be opened publicly, in the presence of 2 or more witnesses, at the
1169 time specified in the request for qualifications, and shall be available for public inspection. The
1170 provisions of sections 44A, 44B and 44E to 44H, inclusive, of chapter 149 shall not apply to
1171 contracts procured under this section. Section 44D of said chapter 149 shall apply as
1172 appropriate to qualifications submitted for contracts under this section, and every such
1173 qualification shall be accompanied by (1) a copy of a certificate of eligibility issued by the
1174 commissioner of capital asset management and maintenance, and (2) by an update statement.

1175 The state agency, local governmental body or building authority shall evaluate the
1176 qualified providers to determine which best meets the needs of the public agency by reviewing
1177 the following:

1178 (1) references of other energy savings contracts performed by the qualified providers;

- 1179 (2) the certificate of eligibility and update statement provided by the qualified providers;
- 1180 (3) quality of the products proposed;
- 1181 (4) methodology of determining energy savings;
- 1182 (5) general reputation and performance capabilities of the qualified providers;
- 1183 (6) substantial conformity with the specifications and other conditions set forth in the
1184 request for qualifications;
- 1185 (7) time specified in the qualifications for the performance of the contract; and
- 1186 (8) any other factors the agency, body, or authority considers reasonable and
1187 appropriate, which factors shall be made a matter of record.

1188 Respondents shall be evaluated only on the criteria set forth in the request for
1189 qualifications.

1190 The state agency, local governmental body or building authority shall conduct
1191 discussions with, and may require public presentations by, each person who submitted
1192 qualifications in response to the request for qualifications regarding his qualifications, approach
1193 to the project and ability to furnish the required services. The agency, body or authority shall
1194 select in order of preference 3 such persons, unless fewer persons respond, it considers to be the
1195 most highly qualified to perform the required services. The agency, body or authority may
1196 request, accept and consider proposals for the compensation to be paid under the contract only
1197 during competitive negotiations conducted under subsection (e).

1198 (d) The state agency, local governmental body or building authority may cancel a
1199 request for qualifications, or may reject in whole or in part any and all proposals when it
1200 determines that cancellation or rejection serves its best interests. The agency, body or authority
1201 shall state in writing the reason for a cancellation or rejection.

1202 (e) The state agency, local governmental body or building authority shall negotiate a
1203 contract with the most qualified person at compensation which it determines is fair, competitive
1204 and reasonable. If the agency, body or authority is unable to negotiate a satisfactory contract
1205 with the person considered to be the most qualified at a price the agency, body or authority
1206 determines to be fair, competitive and reasonable, negotiations with that person shall be
1207 formally terminated. The agency, body or authority shall then undertake negotiations with the
1208 second most qualified person. Failing accord with the second most qualified person, the agency,
1209 body or authority shall terminate those negotiations and then undertake negotiations with the
1210 third most qualified person. Should the agency, body or authority be unable to negotiate a
1211 satisfactory contract with any of the selected persons, it may select additional qualified
1212 providers who responded to the request for qualifications, in the order of their competence and
1213 qualification, and continue negotiations in accordance with this subsection until either an
1214 agreement is reached or the agency, body or authority cancels the request for qualifications.

1215 (f) The decision of the state agency, local governmental body or building authority
1216 regarding the selection of a qualified provider shall be final and not subject to appeal except on
1217 the grounds of fraud or collusion.

1218 (g) The state agency, local governmental body or building authority shall provide public
1219 notice of the meeting at which it proposes to award the energy management services contract, of
1220 the name of the parties to the proposed contract and of the purpose of the contract. The public
1221 notice shall be made at least 10 days before the meeting. The agency, body or authority shall
1222 promptly publish in the central register notice of the award and shall notify the commissioner of
1223 the award and provide to him a copy of the energy management services contract.

1224 (h) The energy management services contract shall include a written guarantee of the
1225 qualified provider that either the amount of energy savings guaranteed shall be achieved or the
1226 qualified provider shall reimburse the state agency, local governmental body or building
1227 authority for the shortfall amount. Methods for measurement and verification of energy savings
1228 shall conform to the most recent standards established by the Federal Energy Management
1229 Program of the United States Department of Energy.

1230 (i) The commissioner, in consultation with the commissioner of capital asset
1231 management and maintenance, shall adopt regulations for the procurement of energy
1232 management services under this section for local government bodies. The commissioner shall
1233 enforce the requirements of this section and regulations adopted as they relate to local
1234 governmental bodies and shall have all the necessary powers to require compliance. The
1235 commissioner of capital asset management and maintenance shall adopt regulations for services
1236 to be procured for state agencies and building authorities. The commissioner of capital asset
1237 management and maintenance shall enforce the regulations as they relate to state agencies and
1238 building authorities. An order of the commissioner under this subsection shall be effective and
1239 may be enforced according to its terms, and enforcement shall not be suspended or stayed by the
1240 entry of an appeal. The superior court for Suffolk county shall have jurisdiction over appeals of
1241 orders of the commissioner under this subsection, and shall also have jurisdiction upon
1242 application of the commissioner to enforce all orders of the commissioner under this subsection.
1243 The burden of proof shall be upon the appealing party to show that an order of the
1244 commissioner is invalid. An aggrieved person shall not be required to seek and order from the
1245 commission as a condition precedent to seeking any other remedy.

1246 (j) Payments under a contract for energy management services may be based in whole
1247 or in part on any cost savings attributable to a reduction in energy and water consumption due to
1248 the contractor's performance or revenues gained due to the contractor's services which are
1249 aimed at energy and water cost savings.

1250 (k) Unless no other manner of description suffices, and the state agency, local
1251 governmental body or building authority so determines in writing, setting forth the basis for the
1252 determination, all requirements shall be written in a manner which describes the requirements to
1253 be met without having the effect of exclusively requiring a proprietary supply or service, or a
1254 procurement from a sole source.

1255 (l) Before entering into a energy management services contract, the state agency, local
1256 governmental body or building authority shall require the qualified provider to file with the
1257 agency, body or authority a payment or a performance bond relating to the installation of energy
1258 savings measures in an amount equal to 100 per cent of the estimated contract value from a

1259 surety company licensed to do business in the commonwealth and whose name appears on
1260 United States Treasury Department Circular 570.

1261 (m) An energy management services contract may extend beyond the fiscal year in
1262 which it became effective.

1263
1264

1265 SECTION 38. Section 12 of said chapter 25A, as so appearing, is hereby amended by
1266 striking out, in line 15, the word “energy” and inserting in place thereof the following words:-
1267 telecommunications, utilities and energy.

1268

1269 SECTION 39. Said section 12 of said chapter 25A, as so appearing, is hereby further
1270 amended by striking out, in line 21, the words “said chairmen” and inserting in place thereof the
1271 following word:- committee.

1272

1273 SECTION 40. Section 13 of said chapter 25A, as so appearing, is hereby amended by
1274 striking out, in line 2 and in lines 16 and 17, the word “division” and inserting in place thereof,
1275 in each instance, the following word:- department.

1276

1277

1278 SECTION 41. Said section 13 of said chapter 25A, as so appearing, is hereby further
1279 amended by striking out, in line 16, the words “division of energy resources” and inserting in
1280 place thereof the following word:- department.

1281

1282 SECTION 42. Said section 13 of said chapter 25A, as so appearing, is hereby further
1283 amended by striking out, in line 10, the word “Division”, and inserting in place thereof the
1284 following word:- Department.

1285

1286 SECTION 43. Said section 13 of said chapter 25A, as so appearing, is hereby further
1287 amended by striking out, in line 15, the words “subject to” and inserting in place thereof the
1288 following words:- without further.

1289

1290 SECTION 44. Said chapter 25A is hereby further amended by adding the following 2
1291 sections:-

1292 Section 14. (a) A state agency, building authority or local governmental body may
1293 contract for energy conservation projects that have a total project cost of \$100,000 or less,
1294 directly and without further solicitation, with electric and gas utilities, their subcontractors and
1295 other providers of such energy conservation projects authorized under sections 19 and 21 of
1296 chapter 25 and section 11G.

1297 (b) For purposes of this section, "total project cost" shall mean all construction costs of
1298 an energy conservation project, whether borne by the utility, agency, authority or body
1299 including, without limitation, the costs associated with equipment purchase and installation of
1300 such equipment. Ancillary services provided at no cost by utilities, such as auditing and design,
1301 shall not be considered part of project cost.

1302 (c) A state agency, building authority or local governmental body may pay for such
1303 energy conservation projects through additions to their monthly utility bills.

1304 (d) Sections 44A to 44M, inclusive, of chapter 149 and section 39M of chapter 30 shall
1305 not apply to contracts entered into under this section.

1306 Section 15. (a) For solar photovoltaic projects with a total project cost that is less than
1307 \$100,000, a state agency, building authority or local governmental body may acquire
1308 photovoltaic panels and associated equipment for onsite use of the energy generated by these
1309 panels from contracts procured by the operational services division under section 22 of chapter
1310 7 and sections 51 and 52 of chapter 30.

1311 (b) For purposes of this section, "total project cost" shall mean all construction costs of a
1312 photovoltaic project, whether borne by the utility, agency, authority or body or other sources,
1313 including, without limitation, the costs associated with equipment purchase and installation of
1314 such equipment. Ancillary services provided at no cost, such as auditing and design, shall not be
1315 considered part of project cost.

1316 (c) Sections 44A to 44M, inclusive, of chapter 149 and section 39M of chapter 30 shall
1317 not apply to contracts entered into under this section.

1318

1319 SECTION 45. Section 2 of chapter 25B of the General Laws, as appearing in the 2006
1320 Official Edition, is hereby amended by striking out, in line 11, the words “of the division”.

1321

1322 SECTION 46. Section 1 of chapter 30B of the General Laws, as so appearing, is hereby
1323 amended by striking out, in line 96, the words “telecommunications and energy” and inserting
1324 in place thereof the following words:- public utilities.

1325

1326

1327 SECTION 47. Said section 1 of said chapter 30B of the General Laws, as so appearing,
1328 is hereby further amended by striking out, in line 97, the word “division” and inserting in place
1329 thereof the following word:- department.

1330

1331 SECTION 48. Section 3 of chapter 40J of the General Laws, as so appearing, is hereby
1332 amended by inserting after the word “designee”, in line 14, the following words:- , the secretary
1333 of energy and environmental affairs or a designee,.

1334

1335 SECTION 49. Said chapter 40J is hereby amended by striking out section 4E, as so
1336 appearing, and inserting in place thereof the following section:-

1337 Section 4E. (a)(1) There is hereby established and set up on the books of the corporation
1338 a separate trust fund to be known as the Massachusetts Renewable Energy Trust Fund,
1339 hereinafter referred to as the fund. The corporation shall hold the fund in an account or accounts
1340 separate from other funds. There shall be credited to the fund all amounts collected under
1341 section 20 of chapter 25 and any income derived from the investment of amounts credited to the
1342 fund. All amounts credited to the fund shall be held in trust and used solely for activities and
1343 expenditures consistent with the public purpose of the fund as set forth in subsection (b) of this
1344 section, including the ordinary and necessary expenses of administration and operation
1345 associated with the fund. Unless otherwise specified, all monies of the corporation, from
1346 whatever source derived, shall be paid to the treasurer of the corporation. Said monies shall be
1347 deposited in the first instance by the treasurer in national banks, trust companies or banking
1348 companies in compliance with section 34 of chapter 29. Funds in such accounts shall be paid

1349 out on the warrant or other order of the treasurer of the corporation or other person as the board
1350 may authorize to execute warrants.

1351 (a)(2) A governing board of not less than 9 individuals with an interest in matters
1352 relating to the general purpose of the fund shall assist the corporation in matters related to the
1353 fund and in the implementation of this section. The governing board shall include: the
1354 commissioner of energy resources, who shall serve as chair; the secretary of energy and
1355 environmental affairs or a designee, the secretary of housing and economic development or a
1356 designee; the secretary of administration and finance or a designee; 1 member of the board to be
1357 appointed by the chair of the board; and 4 members to be appointed by the governor, who shall
1358 have knowledge and experience in the following areas: electricity distribution, generation,
1359 supply or power marketing; the concerns of commercial and industrial ratepayers; the concerns
1360 of residential ratepayers, including low-income ratepayers; economics, financial or investment
1361 consulting relative to the fund; regional environmental concerns; academic issues related to
1362 power generation, distribution or the development or commercialization of renewable energy
1363 sources; institutions of higher education; municipal or regional aggregation matters; and
1364 renewable and alternative energy and energy efficiency issues. The members of the governing
1365 board shall be deemed to be directors for the purposes of the fourth paragraph of section 3.
1366 Each appointed member of the governing board shall serve for a term of 3 years and thereafter
1367 until such member's successor is appointed, and shall be eligible for reappointment. A person
1368 appointed to fill a vacancy on the governing board shall be appointed in a like manner as the
1369 vacating member shall have been appointed and shall be eligible for reappointment. A member
1370 of the governing board appointed by the governor may be removed by the governor for cause.
1371 The members of the governing board shall serve without compensation, but each member shall
1372 be entitled to reimbursement for actual and necessary expenses incurred in the performance of
1373 official duties. The governing board may meet as often as the members shall decide; provided,
1374 however, that it shall meet at least quarterly. The governing board may, by majority vote,
1375 delegate any amount of its authority to an executive committee comprised of members of the
1376 governing board, the board or the staff of the corporation. Any such delegation of authority
1377 may be revoked at any time by majority vote of the governing board.

1378 The governing board shall adopt and submit to the board for approval detailed 5-year

1379 strategic plans and annual operational plans for the application of the fund in support of the
1380 design, implementation, evaluation and assessment of renewable energy programs for the
1381 commonwealth that ensure that the fund shall be employed to provide financial and non-
1382 financial resources to overcome barriers facing renewable energy enterprises, institutions and
1383 projects in a prudent manner consistent with the public purposes and interests set forth in this
1384 section. The strategic plan shall include consideration of, and be consistent with, plans,
1385 regulations and policies issued by the executive office of energy and environmental affairs and,
1386 to the extent practicable, shall consist of at least 4 components: (i) product and market
1387 development to establish a foundation for growth and expansion of the commonwealth's
1388 renewable energy enterprises, institutions and projects, including pilot and demonstration
1389 projects, production incentives, and other activities designed to increase the use and
1390 affordability of renewable energy in the commonwealth; (ii) training and public information to
1391 allow for the development and dissemination of complete, objective and timely information,
1392 analysis and policy recommendations related to the advancement of the public purposes and
1393 interests of the renewable energy fund; (iii) investment to support the growth and expansion of
1394 renewable energy enterprises, institutions and projects; and (iv) research and development
1395 within the commonwealth and the New England region related to renewable energy matters.
1396 The strategic plans and annual operational plans shall also allocate a portion of the fund to the
1397 green communities program to provide technical assistance to municipalities certified as green
1398 communities under section 10 of chapter 25A. The strategic plans and annual operational plans
1399 shall provide detailed budget and staffing levels and specify the expenditure of such monies
1400 from the fund to each of these component activities; provided, however, that monies so
1401 expended shall be used to develop such renewable energy projects with priority given to
1402 projects, institutions, and enterprises, first, within the commonwealth; next, to such activities
1403 within New York and the New England region which serve the regional power grid; and finally,
1404 all other such activities regardless of location. In developing the strategic plans and yearly
1405 operational plans, the governing board shall consult with and utilize the services of the
1406 department of public utilities and the department of energy resources for such technical
1407 assistance as the governing board deems necessary or appropriate to the effective discharge of
1408 the governing board's responsibilities and duties relative to the fund.

1409 The 5-year strategic plans and annual operational plans shall be deemed approved unless
1410 they are rejected by a majority vote of the board within 60 days of the plan's referral to the
1411 board. If the board rejects any submitted plan, the board shall, within 10 days of such action,
1412 provide the governing board with a written explanation of the denial, including any proposed
1413 recommendations to the submitted plan. Upon approval by the board of any plan, the board
1414 shall delegate authority to the governing board to implement the plan. The delegated authority
1415 shall include, but not be limited to, the approval and implementation of budget and staffing
1416 projections set forth in the plan, the hiring of an executive director to administer the fund at the
1417 direction of the governing board, and the hiring of outside consultants or other professionals to
1418 assist in the implementation of the plan. The governing board shall present any subsequent
1419 strategic plans and annual operational plans, or substantial modifications of any approved plan,
1420 to the board for approval. The board shall not be liable for any claims arising out of or related
1421 to the implementation of any approved plan, or any other decisions of the governing board
1422 relating to administration of the fund.

1423 (b) The board shall draw upon monies in the fund for the public purpose of generating
1424 the maximum economic and environmental benefits over time from renewable energy to the
1425 ratepayers of the commonwealth through a series of initiatives which exploit the advantages of
1426 renewable energy in a more competitive energy marketplace by promoting the increased
1427 availability, use and affordability of renewable energy, by making operational improvements to
1428 existing renewable energy projects and facilities which, in the determination of the governing
1429 board, would yield more significant results in the development of renewable energy if said
1430 funds were made available for the creation of new renewable energy facilities, and by fostering
1431 the formation, growth, expansion and retention within the commonwealth of preeminent clusters
1432 of renewable energy and related enterprises, institutions and projects, which serve the citizens of
1433 the commonwealth consistent with a strategic plan or annual operational plan.

1434 (c) Public interests to be advanced through the governing board's actions shall include,
1435 but not be limited to, the following: (i) the development and increased use and affordability of
1436 renewable energy resources in the commonwealth and the New England region; (ii) the
1437 protection of the environment and the health of the citizens of the commonwealth through the
1438 prevention, mitigation and alleviation of the adverse pollution effects associated with certain

1439 electricity generation facilities; (iii) the maximization of benefits to consumers of the
1440 commonwealth resulting from increased fuel and supply diversity; (iv) the creation of additional
1441 employment opportunities in the commonwealth through the development of renewable
1442 technologies; (v) the stimulation of increased public and private sector investment in, and
1443 competitive advantage for, renewable energy and related enterprises, institutions and projects in
1444 the commonwealth and the New England region; and (vi) the stimulation of entrepreneurial
1445 activities in these and related enterprises, institutions and projects.

1446 (d) In furtherance of any strategic and operational plans, and other public purposes and
1447 interests, the board may expend monies from the fund to make grants, contracts, loans, equity
1448 investments, energy production credits, bill credits, or rebates to customers; to provide financial
1449 or debt service obligation assistance; or to take any other actions, in such forms, under such
1450 terms and conditions and under such selection procedures as the board deems appropriate and
1451 otherwise in a manner consistent with good business practices; provided, however, that the
1452 board shall generally employ a preference for competitive procurements; provided further, that
1453 the board shall endeavor to leverage the full range of the resources, expertise and participation
1454 of other state and federal agencies and instrumentalities in the design and implementation of
1455 programs under this section; and provided further, that the board has determined and
1456 incorporated into the minutes of its proceedings a finding that such actions are calculated to
1457 advance the public purpose and public interests set forth in this section, including, but not
1458 limited to, the following: (i) the growth of the renewable energy-provider industry; (ii) the use
1459 of renewable energy by electricity customers in the commonwealth; (iii) public education and
1460 training regarding renewable energy; (iv) product and market development; (v) pilot and
1461 demonstration projects and other activities designed to increase the use and affordability of
1462 renewable energy resources by and for consumers in the commonwealth; (vi) the provision of
1463 financing in support of the development and application of related technologies at all levels,
1464 including, but not limited to, basic and applied research and commercialization activities; (vii)
1465 the design and making of improvements to existing renewable energy projects and facilities as
1466 defined herein which were in operation as of December 31, 1997; and (viii) matters related to
1467 the conservation of scarce energy resources.

1468 (e) Subject to the approval of the board, and not inconsistent with any strategic or annual

1469 operational plans, investment activity of monies from the fund may consist of the following: (i)
1470 an equity fund, to provide risk capital to renewable energy enterprises, institutions and projects;
1471 (ii) a debt fund, to provide loans to energy enterprises, institutions, projects, intermediaries and
1472 end-users; and (iii) a market growth assistance fund, to be used to attract private capital to the
1473 equity and debt funds. To implement these investment activities, the corporation may retain,
1474 through a bid process, public or private sector investment fund managers, who shall have prior
1475 knowledge and experience in fund management and possess related skills in renewable energy
1476 and related technologies development, to direct the investment activity described in this section
1477 and to seek other fund co-sponsors to contribute public and private capital from the
1478 commonwealth and other states; provided, however, that such capital shall be appropriately
1479 segregated. The managers, subject to the approval of the board, may retain necessary services
1480 and consultants to carry out the purposes of the fund. The managers shall develop a business
1481 plan to guide investment decisions, which shall be approved by the board before any
1482 expenditures from the trust fund and which shall be consistent with the provisions of the plan
1483 for the fund as adopted by the board.

1484 (f) For the purposes of expenditures from the fund, renewable energy technologies
1485 eligible for assistance shall mean technologies eligible as Class I or Class II renewable energy
1486 generating sources under section 11F of chapter 25A, micro-combined heat and power units less
1487 than 60 kilowatts, solar hot water, geothermal heating and cooling projects, biomass thermal
1488 and storage and conversion technologies connected to qualifying generation projects; provided,
1489 however, that the board may make grants from the fund, not to exceed a total of \$4 million
1490 annually, in support of Massachusetts-based public and private enterprises developing new
1491 technologies to significantly increase the efficiency of the internal combustion engine. The
1492 board shall make grants, loans or other support from the fund, not to exceed \$3 million annually
1493 for hydroelectric facilities, other than pumped storage facilities in the commonwealth,
1494 constructed before December 31, 1997 for upgrades to increase efficiency or capacity and to
1495 reduce environmental impacts. Such funds may also be used for appropriate joint energy
1496 efficiency and renewable projects, as well as for investment by distribution companies in
1497 renewable energy and distributed generation opportunities, if consistent with this section. The
1498 following technologies or fuels shall not be considered renewable energy supplies: coal, oil,

1499 natural gas except when used in fuel cells or micro-combined heat and power, and nuclear
1500 power.

1501 (g) The use by the corporation and governing board of monies to implement this section
1502 shall be deemed to be an essential governmental function. Notwithstanding any general or
1503 special law to the contrary, clause (a) of section 4A shall apply to expenditures made from the
1504 fund; provided, however, that no such expenditure shall be deemed to involve a capital facility
1505 project; provided further, that no lease or license executed in furtherance of the public purpose
1506 and interests of the fund shall exceed 30 years in duration, and the duration and terms shall be
1507 developed in a manner consistent with good business practices; and provided further, that the
1508 corporation or governing board shall take no action which contravenes the commonwealth's
1509 reversionary interest in any of its real property. The corporation, any purchasing cooperative
1510 established thereby and all members of any such purchasing cooperative may participate in any
1511 energy-related purchasing, aggregating or similar program established and operated by the
1512 Health and Educational Facilities Authority and such participation shall be deemed to be in
1513 furtherance of an essential governmental function.

1514 (h) Clause (k) of section 4 shall not apply to disbursements from the trust fund.

1515 (j) The books and records of the corporation and governing board relative to
1516 expenditures and investments of monies from the fund shall be subject to a biennial audit by the
1517 auditor of the commonwealth.

1518 (k) Not later than August 15th of each year, the board, in conjunction with the governing
1519 board, shall annually submit to the governor, the joint committee on telecommunications,
1520 utilities and energy, and the senate and house committees on ways and means a report detailing
1521 the expenditure and investment of monies from the fund over the previous fiscal year, the ability
1522 of the fund to meet the requirements this section, and any recommendations for improving the
1523 ability of the governing board, the board, the corporation and the fund to meet such
1524 requirements.

1525 (l) Notwithstanding any general or special law to the contrary, including without
1526 limitation any laws related to the procurement of electricity, the board shall, upon the written
1527 request of the governor, transfer moneys in the fund, in an amount not exceeding \$17 million in
1528 the aggregate, to the commonwealth for deposit in the General Fund. As a condition subsequent
1529 to any such transfer, the commonwealth, acting by and through the department of energy
1530 resources or a successor agency, shall enter into an agreement with the corporation under which
1531 the commonwealth, at the direction of the corporation, shall enter into contracts, for terms not to
1532 exceed 20 years, with owners of facilities that generate electricity using renewable energy
1533 technologies, wholesale power marketers or other market intermediaries selling such electricity,
1534 for the purchase by the commonwealth, for its own use or for the use of any municipal electric
1535 department, public instrumentality or other governmental or nongovernmental entity in the
1536 commonwealth, of electricity produced by renewable energy technologies. The corporation
1537 shall determine the particular types of technologies which shall be the subject of any such
1538 contract based on such criteria as it shall deem advisable, including without limitation retail
1539 consumer choices of such renewable energy technologies. The aggregate dollar amount of the
1540 green power premium associated with electricity purchases to be made by the commonwealth
1541 for its own use under such contracts shall have a present value, determined according to such
1542 discount rate as shall be mutually agreeable to the corporation and the commonwealth, of such
1543 amount as shall be transferred under the first sentence of this paragraph. The green power
1544 premium shall be determined by subtracting from the total amount of the purchase price the
1545 undifferentiated commodity price for electricity under then-current commonwealth contracts.
1546 The maximum payment in any 1 fiscal year under all such contracts shall not exceed \$5 million.
1547 The commonwealth shall be indemnified under such contracts by the owners or power
1548 marketers on such terms as the corporation shall deem commercially reasonable. The amounts
1549 collected under section 20 of chapter 25 shall be impressed with a trust for the benefit of the
1550 fund. To facilitate the purchase by the corporation of electricity produced by renewable energy
1551 technologies or of certificates produced under the renewable energy portfolio standard
1552 regulations of the department of energy resources representing the generation attributes of
1553 electrical energy produced by renewable energy technologies, and in consideration of the sale of
1554 such electricity or certificates, the commonwealth shall covenant with the sellers of such
1555 electricity or certificates that the amounts collected under said section 20 shall not be diverted

1556 from the fund and that the rates of the mandatory charges under said section 20 shall not be
1557 reduced during the term, which shall not exceed 20 years, of any contract entered into by the
1558 corporation for the purchase of such electricity or certificates below a level which shall enable
1559 the corporation to fulfill the terms of such contracts. In furtherance of the public purposes of the
1560 fund, income derived from the investment of amounts collected under said section 20 shall be
1561 expended by the corporation as provided in subsection (a) and, in the discretion of the
1562 corporation, in furtherance of the public purposes of the corporation and for such costs of
1563 departments and agencies that support or are otherwise consistent with the purposes of the fund.
1564

1565 SECTION 50. Section 7 of chapter 44 of the General Laws, as so appearing, is hereby
1566 amended by striking out clause (3B) and inserting in place thereof the following clause:-

1567 (3B) For energy conservation, alternative energy or renewable energy improvements to
1568 public buildings or facilities owned or leased by the city or town, or on property owned or
1569 leased by the city or town, 20 years.

1570

1571 SECTION 51. Section 1 of chapter 90 of the General Laws, as amended by section 1 of
1572 chapter 79 of the acts of 2008, is hereby further amended by inserting before the definition of
1573 “Ambulance” the following 2 definitions:-

1574 “Alternative fuel”, an energy source used to power a vehicle that does not meet the
1575 definition of fuel in section 1 of chapter 64A and is not diesel motor fuel.

1576 “Alternative fuel vehicle”, a vehicle powered by alternative fuel with the following
1577 attributes:

1578 (a) the capability of operating only on alternative fuel;

1579 (b) its original use was commenced with the taxpayer;

1580 (c) acquired by the taxpayer for use or lease, but not for resale;

1581 (d) is designed to use and uses alternative fuel for a significant portion of the total fuel
1582 used for propulsion energy for the vehicle; and

1583 (e) when operating on petroleum fuel, the vehicle model's miles per gallon rating from
1584 the United States Environmental Protection Agency exceeds the agency's corporate average fuel
1585 economy requirement for the class of vehicles, whether cars or light trucks, in which the vehicle
1586 model is classified. The model specification shall include characteristics that affect fuel

1587 economy and for which the United States Environmental Protection Agency issues distinct
1588 miles per gallon ratings, such as transmission type and engine size.

1589

1590 SECTION 52. Said section 1 of said chapter 90, as so appearing, is hereby further
1591 amended by inserting after the definition of “House trailer” the following definition:-

1592 “Hybrid vehicle”, a vehicle (a) which draws propulsion energy from onboard sources of
1593 stored energy which are both: (1) an internal combustion or heat engine using combustible fuel;
1594 and (2) a rechargeable energy storage system; or (b) which, in the case of a passenger vehicle,
1595 medium duty passenger vehicle or light truck: (1) for model year 2002 and later model year
1596 vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds
1597 the equivalent qualifying California low emission vehicle standard adopted under section
1598 243(e)(2) of said Clean Air Act for that make and model year; (2) for model year 2004 and later
1599 model vehicles, has received a certificate that the vehicle meets or exceeds the Tier II Bin 5
1600 emission level established in regulations prescribed by the Administrator of the United States
1601 Environmental Protection Agency under section 202(i) of said Clean Air Act for that make and
1602 model year vehicle; and (3) achieves an increase of 10 per cent fuel efficiency as compared to
1603 the average vehicle of its class as defined by the United States Environmental Protection
1604 Agency.

1605

1606 SECTION 53. Subclause (3) of clause (b) of the definition of “hybrid vehicle” in said
1607 section 1 of said chapter 90, as appearing in section 52, is hereby amended by striking out the
1608 figure “10” and inserting in place thereof the following figure:- 25.

1609

1610 SECTION 54. Section 3 of chapter 143 of the General Laws, as so appearing, is hereby
1611 amended by inserting after the word “structure”, in line 55, the following words:- , and the
1612 energy requirements imposed by clause (p) of section 94.

1613

1614 SECTION 55. Said section 94 of said chapter 143, as amended by section 1 of chapter
1615 78 of the acts of 2008, is hereby further amended by adding the following 4 clauses:-

1616

1617 (o) To adopt and fully integrate the latest International Energy Conservation Code as
1618 part of the state building code, together with any more stringent energy-efficiency provisions
1619 that the board, in consultation with the department of energy resources, concludes are
1620 warranted. The energy provisions of the state building code shall be updated within 1 year of
1621 any revision to the International Energy Conservation Code.

1622 (p) In consultation with the department of energy resources, to develop requirements and
1623 promulgate regulations as part of the state building code for the training and certification of city
1624 and town inspectors of buildings, building commissioners and local inspectors regarding the
1625 energy provisions of the state building code, and to require that all new construction and any
1626 major reconstruction, alteration or repair of residential and non-residential buildings pass
1627 inspection by inspectors who have been trained and certified, demonstrating full compliance
1628 with the energy provisions of the state building code.

1629 (q) In consultation with the department of energy resources, to develop requirements and
1630 promulgate regulations as part of the state building code, in addition to the requirements of the
1631 latest International Energy Conservation Code, requiring a process to ensure that all new non-
1632 residential buildings larger than 10,000 square feet and any major reconstruction, alteration or
1633 repair of all such buildings perform as designed with respect to energy consumption by
1634 undergoing building commissioning or acceptance testing. Such commissioning must be
1635 completed before the issuance of a certificate of occupancy.

1636 (r) In consultation with the department of energy resources, professional organizations
1637 and other stakeholders, to prepare a report evaluating the advisability of a requirement of
1638 periodic commissioning for large non-residential buildings and, if such a requirement is deemed
1639 advisable, evaluating possible approaches to periodic commissioning.

1640

1641 SECTION 56. Chapter 159 of the General Laws is hereby amended by striking out
1642 section 10, as amended by section 30 of chapter 19 of the acts of 2007, and inserting in place
1643 thereof the following section:-

1644

1645 Section 10. The department of telecommunications and cable shall enforce this chapter
1646 to the extent that it relates to telecommunications. The department of public utilities shall
1647 enforce all other provisions.

1648

1649 SECTION 57. Chapter 164 of the General Laws is hereby amended by striking out
1650 section 1, as amended by section 36 of said chapter 19, and inserting in place thereof the
1651 following section:-

1652 Section 1. In this chapter, unless the context otherwise requires, the following words
1653 shall have the following meanings:

1654 “Aggregator”, an entity which groups together electricity customers for retail sale
1655 purposes, except for public entities, quasi-public entities or authorities, or subsidiary
1656 organizations thereof, established under the laws of the commonwealth.

1657

1658 “Alternative energy development”, shall include, but shall not be limited to, solar
1659 energy, wind, wood, alcohol, hydroelectric, biomass energy systems, renewable non-depletable
1660 and recyclable energy sources.

1661 “Alternative energy producer”, a person, firm, partnership, association, public or private
1662 corporation, or an agency, department, board, commission or authority of the commonwealth or
1663 of a subdivision of the commonwealth, that owns or operates a cogeneration facility or small
1664 power production facility as defined in this section, and does not engage in the retail sale of
1665 electricity other than sales to customers that are within the confines of an industrial park, which
1666 existed before March 1, 1982, and in which there existed as of said date electrical generating
1667 capacity of more than 15 megawatts.

1668 “Alternative energy property”, any property powered in whole or in part by the sun,
1669 wind, water, biomass, alcohol, wood, or any renewable, non-depletable or recyclable fuel, and
1670 property related to the exploration, development, processing, transportation and distribution of
1671 the aforementioned energy resources.

1672 “Ancillary services”, those functions which support generation, transmission, and
1673 distribution, and which shall include the following services: (1) reactive power or voltage
1674 control; (2) loss compensation; (3) scheduling and dispatch; (4) load following; (5) system
1675 protection service; and (6) energy imbalance service.

1676 “Articles of organization”, (i) the articles of organization of a corporation which were
1677 filed after October 1, 1973; (ii) an agreement of association, special act of incorporation and
1678 other charter documents, including by-law provisions and stockholder votes in effect before

1679 October 1, 1973, which, after that date, would be included in articles of organization, and all
1680 amendments thereto, effective before October 1, 1973; and (iii) any of the following
1681 amendments made or filed from time to time subsequent to October 1, 1973:

1682 (1) a certificate of a vote establishing a series filed under section 26 of chapter 156B;

1683 (2) articles of amendment filed under section 8B;

1684 (3) restated articles of organization filed under section 8C;

1685 (4) certificates of confirmation of proceedings filed under section 8D;

1686 (5) articles of consolidation or merger filed under section 102A;

1687 (6) articles of dissolution filed under section 100 of chapter 156B;

1688

1689 (7) a certificate as to the revival of a corporation filed under section 108 of chapter
1690 156B.

1691 “Basic service”, the electricity services provided to a retail customer upon either: (i) the
1692 inability of a customer to receive competitive supply from a supplier under subsection (d) of
1693 section 1B; (ii) the failure of the retail customer to elect competitive supply from a supplier
1694 under said subsection (d) of said section 1B; or (iii) upon the expiration of and the retail
1695 customer’s failure to renew a competitive supply contract under said subsection (d) of said
1696 section 1B or other means.

1697 “Cogeneration facility”, any electrical generating unit having a power production
1698 capacity which, together with any other facilities located at the same site, is not greater than 30
1699 megawatts and which produces electric energy and steam or other form of useful energy utilized
1700 for industrial, commercial, heating or cooling purposes, and employs a fuel other than oil as its
1701 primary energy source, except that oil may be used: (1) in combination with coal, in a mixture
1702 not exceeding 70 per cent oil; or (2) during any modifications to any existing electrical
1703 generating facility undertaken for the purpose of enabling such facility to employ, except during
1704 any periods of maintenance or repair, a fuel other than oil as its primary energy source;
1705 provided, however, that cogeneration facility shall also include any electric generating unit
1706 having a power production capacity which, together with any other facilities located at the same
1707 site, is not greater than 30 megawatts and which produces electric energy and steam or other
1708 form of useful energy utilized for industrial, commercial, heating or cooling purposes that is
1709 within the confines of an industrial park, which existed before March 1, 1982 and, in which park

1710 there existed, as of said date, electrical generating capacity of more than 15 megawatts, and in
1711 which there existed, since said date, a cogeneration facility or a small power production facility.

1712 “Contract termination fee”, the fees owed by the distribution company to its wholesale
1713 power supplier, as determined and approved by the department of public utilities.

1714 “Corporation”, a corporation to which this chapter applies, as set forth in section 3.

1715 “Default Service”, the electricity services provided to a retail customer upon: (i) the
1716 failure of a distribution company or supplier to provide such electricity services as required by
1717 law or as contracted for under the standard service offer; (ii) the completion of the term of the
1718 standard service offer; or (iii) the inability of a customer to receive standard service transition
1719 rates during the term of the standard service offer under section 1B.

1720 “Department”, the department of public utilities.

1721 “Distributed generation”, a generation facility or renewable energy facility connected
1722 directly to distribution facilities or to retail customer facilities which alleviate or avoid
1723 transmission or distribution constraints or the installation of new transmission facilities or
1724 distribution facilities.

1725 “Distribution”, the delivery of electricity over lines which operate at a voltage level
1726 typically equal to or greater than 110 volts and less than 69,000 volts to an end-use customer
1727 within the commonwealth. The distribution of electricity shall be subject to the jurisdiction of
1728 the department of public utilities.

1729 “Distribution company”, a company engaging in the distribution of electricity or
1730 owning, operating or controlling distribution facilities; provided, however, that a distribution
1731 company shall not include any entity which owns or operates plant or equipment used to
1732 produce electricity, steam and chilled water, or an affiliate engaged solely in the provision of
1733 such electricity, steam and chilled water, where the electricity produced by such entity or its
1734 affiliate is primarily for the benefit of hospitals and non-profit educational institutions, and
1735 where such plant or equipment was in operation before January 1, 1986.

1736 “Distribution facility”, a plant or equipment used for the distribution of electricity and
1737 which is not a transmission facility, a cogeneration facility or a small power production facility.

1738 “Distribution service”, the delivery of electricity to the customer by the electric
1739 distribution company from points on the transmission system or from a generating plant at
1740 distribution voltage.

1741 “Electric company”, a corporation organized under the laws of the commonwealth for
1742 the purpose of making by means of water power, steam power or otherwise and for selling,
1743 transmitting, distributing, transmitting and selling, or distributing and selling, electricity within
1744 the commonwealth, or authorized by special act so to do, even though subsequently authorized
1745 to make or sell gas; provided, however, that electric company shall not mean an alternative
1746 energy producer; provided further, that a distribution company shall not include an entity which
1747 owns or operates a plant or equipment used to produce electricity, steam and chilled water, or an
1748 affiliate engaged solely in the provision of such electricity, steam and chilled water, where the
1749 electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and
1750 nonprofit educational institutions, and where such plant or equipment was in operation before
1751 January 1, 1986; and provided further, that electric company shall not mean a corporation only
1752 transmitting and selling, or only transmitting, electricity unless such corporation is affiliated
1753 with an electric company organized under the laws of the commonwealth for the purpose of
1754 distributing and selling, or distributing only, electricity within the commonwealth.

1755 “Electric service”, the provision of generation, transmission, distribution or ancillary
1756 services.

1757 “End user”, any individual, corporation, firm or subsidiary of a firm that is an ultimate
1758 consumer of petroleum products and which, as part of its normal business practices, purchases
1759 or obtains petroleum products from a wholesaler or reseller and receives delivery of that
1760 product.

1761 “Energy audit”, a determination of the energy consumption characteristics of a building
1762 or facility which identifies the type, size and rate of energy consumption of such building or
1763 facility and the major energy using systems of such building or facility; determines appropriate
1764 energy conservation maintenance and operating procedures; and indicates the need, if any, for
1765 the acquisition and installation of energy conservation measures or alternative energy property.

1766 “Energy conservation”, shall include, but shall not be limited to, the modification of or
1767 change in the operation of real or personal property in a manner likely to improve the efficiency
1768 of energy use, energy conservation measures and any process to audit or identify and specify
1769 energy and cost savings.

1770 “Energy conservation measures”, measures involving modifications of maintenance and
1771 operating procedures of a building or facility and installations therein, which are designed to

1772 reduce energy consumption in such building or facility, or the installation or modification of an
1773 installation in a building or facility which is primarily intended to reduce energy consumption.

1774 “Energy conservation projects”, projects to promote energy conservation, including but
1775 not limited to, energy conserving modification to windows and doors; caulking and
1776 weatherstripping; combined heat and power facilities; insulation; automatic energy control
1777 systems; hot water systems; equipment required to operate variable steam, hydraulic and
1778 ventilating systems; plant and distribution system modifications including replacement of
1779 burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical
1780 furnace ignition systems; utility plant system conversions; replacement or modification of
1781 lighting fixtures; energy recovery systems; and cogeneration systems.

1782 “Energy efficiency”, the implementation of an action, policy or measure which entails
1783 the application of the least amount of energy required to produce a desired or given output.

1784 “Energy management services”, a program of services, including energy audits, energy
1785 conservation measures, energy conservation projects or a combination thereof, and building
1786 maintenance and financing services, primarily intended to reduce the cost of energy and water
1787 in operating buildings, which may be paid for in whole or in part, by cost savings attributable to
1788 a reduction in energy and water consumption which result from such services.

1789 “FERC”, the federal energy regulatory commission.

1790 “Gas company”, a corporation organized for the purpose of making and selling or
1791 distributing and selling, gas within the commonwealth, even though subsequently authorized to
1792 make or sell electricity; provided, however, that gas company shall not mean an alternative
1793 energy producer.

1794 “Generation”, the act or process of transforming other forms of energy into electric
1795 energy or the amount of electric energy so produced.

1796 “Generation company”, a company engaged in the business of producing, manufacturing
1797 or generating electricity or related services or products, including but not limited to, renewable
1798 energy generation attributes for retail sale to the public.

1799 “Generation facility”, a plant or equipment used to produce, manufacture or otherwise
1800 generate electricity and which is not a transmission facility.

1801 “Generation service”, the provision of generation and related services to a customer.

1802 “Green building”, a building, including but not limited to, homes, offices, schools, and
1803 hospitals constructed or renovated to incorporate design techniques, technologies, and materials
1804 that lessen its dependence on fossil fuels and minimize its overall negative environmental
1805 impact.

1806 “Horizontal market power”, a situation in which 1 or a few market participants
1807 combined have undue concentration in the ownership of facilities at the same level in the chain
1808 of production resulting in the ability to influence price to his or their own benefit.

1809 “ISO-NE”, the independent system operator for New England.

1810 “Mitigation”, all actions or occurrences which reduce the amount of money that a
1811 distribution company seeks to collect through the transition charge, including those amounts
1812 resulting from both matters within the company's control and from matters not wholly within
1813 the company's control; provided, however, that mitigation shall, in accordance with section 1G,
1814 include, but not be limited to, the following: (1) sales of capacity, energy, ancillary services,
1815 reserves, and emission allowances from generating facilities that are wholly or partly owned by
1816 the company; (2) sales of capacity, energy, ancillary services, reserves and emission allowances
1817 from generating facilities with which the company has a power purchase agreement; (3)
1818 adjustments to the company's minimum obligations under purchase power agreements that
1819 decrease such obligations, such as those that may be obtained through contract buy-out or
1820 renegotiation; (4) residual value; (5) sales and voluntary write downs of company generation-
1821 related assets; (6) any market value in excess of net book value associated with the sale, lease,
1822 transfer or other use of the assets of the company unrelated to the provision of transmission
1823 service or distribution service at regulated prices, including, but not limited to, rights-of-way,
1824 property and intangible assets when the costs associated with the acquisition of those assets
1825 have been reflected in the company's rates for regulated service; provided, however, that the
1826 department of public utilities shall determine the market values based on the highest prices that
1827 such assets could reasonably realize after an open and competitive sale; and (7) any allowed
1828 refinancing of stranded assets or other debt obligations as provided by law.

1829 “Non-renewable energy supply and resource development”, shall include, but shall not
1830 be limited to, gasoline, natural gas, coal, nuclear energy, offshore and onshore petroleum and
1831 facilities related to the exploration, development, processing, transportation and distribution of

1832 such resources and programs established for the allocation of supplies of such resources and the
1833 development of supply shortage contingency plans.

1834 “Petroleum products”, propane, gasoline, unleaded gasoline, kerosene, #2 heating oil,
1835 diesel fuel, kerosene base jet fuel, and #4, 5 and 6 residual oil for utility and non-utility uses,
1836 and all petroleum derivatives, whether in bond or not, which are commonly burned to produce
1837 heat, power, electricity or motion or which are commonly processed to produce synthetic gas
1838 for burning.

1839 “Primary energy source”, fuels used, except during periods of maintenance or repair, for
1840 the generation of electric energy; provided, however, that primary energy source shall not
1841 include the minimum amounts of fuel required for ignition, start-up, testing, flame stabilization,
1842 and control uses, and minimum amounts of fuel required to alleviate or prevent unanticipated
1843 equipment outages and emergencies declared by the governor, directly affecting the public
1844 health, safety and welfare which would result from electric power outages.

1845 “Renewable energy”, (i) resources whose common characteristic is that they are
1846 nondepletable or are naturally replenishable but flow-limited; or (ii) existing or emerging non-
1847 fossil fuel energy sources or technologies, which have significant potential for
1848 commercialization in New England and New York, and shall include the following: solar
1849 photovoltaic or solar thermal electric energy; wind energy; ocean thermal, wave, or tidal energy;
1850 geothermal; fuel cells; landfill gas; waste-to-energy which is a component of conventional
1851 municipal solid waste plant technology in commercial use; naturally flowing water and
1852 hydroelectric; and low emission advanced biomass power conversion technologies using such
1853 fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops,
1854 biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or
1855 algae; provided, however, that renewable energy supplies shall not include coal, oil, natural gas
1856 except when used in fuel cells, and nuclear power.

1857 “Reseller”, a person, corporation, firm or subsidiary of any firm that carries on the trade
1858 or business of purchasing petroleum products and reselling them without substantially changing
1859 their form, or any wholesaler or retail seller of electricity or natural gas.

1860 “Residual value”, the value of electric company assets, not including the income which
1861 may be obtained through generation facility operation.

1862 “Retail access”, the use of transmission and distribution facilities owned by a
1863 transmission company or a distribution company to transmit or distribute electricity from a
1864 generation company, supplier or aggregator to retail customers.

1865 “Retail customer”, a customer who purchases electricity for its own consumption.

1866 “Securitization”, the use of rate reduction bonds to refinance debt and equity associated
1867 with transition costs under section 1H.

1868 “Service territory”, the geographic area in which a distribution company provided
1869 distribution service on July 1, 1997.

1870 “Small power production facility”, a facility which is any electrical generating unit
1871 which produces electric energy solely by the use, as a primary energy source, of biomass, waste,
1872 wind, water, wood, geothermal, solar energy or any combination thereof, or produces gas if it is
1873 produced from coal, biomass, solid waste or wood, and has a power production capacity which,
1874 together with any other facilities located at the same site, is not greater than 30 megawatts.

1875 “Steam distribution company,” a person, firm, partnership, association or private
1876 corporation organized or operating under the laws of the commonwealth with the primary
1877 purpose of operating a plant, equipment or facilities for the manufacture, production,
1878 transmission, furnishing or distribution of steam to or for the public for compensation within the
1879 commonwealth; provided, however, that steam distribution company shall not include: (i) an
1880 entity producing or distributing steam exclusively on private property and solely for use by the
1881 entity or the entity's tenant, and not for distribution or sale; or (ii) a company that produces and
1882 sells steam as a by-product of the production of electricity for sale in the wholesale electricity
1883 markets and does not own or operate pipelines off site of the generating facility for the
1884 distribution of steam.

1885 “Supplier”, a supplier of generation service to retail customers, including power
1886 marketers, brokers and marketing affiliates of distribution companies, except that no electric
1887 company shall be considered a supplier.

1888 “Supplying electricity in bulk”, engaging in the business of making and selling or
1889 distributing and selling electricity to electric companies, railroads, street railways or electric
1890 railroads, or to municipalities for municipal use or re-sale to their inhabitants, or to persons,
1891 associations or corporations under limitations imposed by special law or under section 90 or
1892 corresponding provisions of earlier laws.

1893 “Transition charge”, the charge that provides the mechanism for recovery of an electric
1894 company's transition costs.

1895 “Transition costs”, the embedded costs as determined under section 1H which remain
1896 after accounting for maximum possible mitigation, subject to determination by the department
1897 of public utilities.

1898 “Transmission”, the delivery of power over lines that operate at a voltage level typically
1899 equal to or greater than 69,000 volts from generating facilities across interconnected high
1900 voltage lines to where it enters a distribution system.

1901 “Transmission company”, a company engaging in the transmission of electricity or
1902 owning, operating or controlling transmission facilities; provided, however, that a transmission
1903 company shall provide transmission service to all generation companies, municipal lighting
1904 plants, suppliers and load aggregators in the commonwealth, whether affiliated or not, on
1905 comparable, nondiscriminatory prices and terms, under federal law and regulation.

1906 “Transmission facility”, plant or equipment used for the transmission of electricity, as
1907 determined by the FERC under federal law and regulation.

1908 “Transmission service”, the delivery of electricity to a retail customer, supplier,
1909 distribution company or wholesale customer by a transmission company.

1910 “Unbundled rates”, rates designed to separate the costs of providing generation, the costs
1911 of transmission and distribution services, and transition and general access charges.

1912 “Vertical market power”, a situation in which 1 or a few market participants, having
1913 joint ownership of facilities at differing levels of the chain of production, such as generation,
1914 transmission and distribution, possess the ability to use such joint ownership to influence price
1915 to his or their own benefit.

1916 “Wholesaler”, a person, corporation, firm or any part or subsidiary of any firm which
1917 supplies, sells, transfers or otherwise furnishes petroleum products to resellers or end-users.

1918 “Wholesale generation company”, a company engaged in the business of producing,
1919 manufacturing or generating electricity for sale at wholesale only.

1920

1921 SECTION 58. Said section 1A of said chapter 164, as appearing in the 2006 Official
1922 Edition, is hereby amended by adding the following subsection:-

1923 (f) Neither this section nor sections 1B to 1H, inclusive, shall preclude an electric
1924 company or a distribution company from constructing, owning and operating generation
1925 facilities that produce solar energy; provided, however, that such company shall not own or
1926 operate more than 25 megawatts of such facilities before January 1, 2009, and 50 megawatts of
1927 such a facility after January 1, 2010. No electric company or distribution company may recover
1928 costs associated with the construction of a generating facility producing solar energy without
1929 obtaining prior approval for the costs from the department. Upon the filing by an electric
1930 company or a distribution company of a petition for pre-approval of cost recovery for a solar
1931 energy generating facility, the department shall determine whether the proposal is consistent
1932 with the commonwealth's energy policy and could be used to satisfy, in part, the renewable
1933 energy portfolio standard requirements set forth in section 11F of chapter 25A. The department
1934 shall issue an order within 6 months after the date of filing by the electric company or
1935 distribution company. The department may adopt such rules and regulations as may be
1936 necessary to implement this subsection.

1937

1938 SECTION 59. Subsection (f) of section 1A of chapter 164 of the General Laws is
1939 hereby repealed.

1940

1941 SECTION 60. Section 1D of said chapter 164, as so appearing, is hereby amended by
1942 adding the following 3 paragraphs:-

1943 Residential or small commercial customers: (a) initiating new utility service; (b)
1944 reinstating service following a change of residence or business location; (c) making an inquiry
1945 regarding their rates; or (d) seeking information regarding energy efficiency shall be offered the
1946 option to learn about their ability to enroll with a participating non-utility competitive supplier
1947 of energy. Customers expressing an interest in learning about their electric supply options shall
1948 be informed of offers available by participating non-utility competitive suppliers. The electric
1949 distribution company shall describe then available offers available through a method approved
1950 by the department.

1951 Participating non-utility competitive suppliers of energy may list qualifying electric
1952 offers to provide electric generation service to residential and small commercial customers in

1953 each customer's utility bill. The department shall determine the manner such information is
1954 presented in customers' utility bills.

1955 For electric suppliers who have chosen the complete billing method, the electric
1956 distribution company shall make timely payments to such suppliers in accordance with this
1957 paragraph. The distribution company shall: (a) bill all of the of the electric supplier's customers
1958 in a service class according to complete billing; (b) pay such suppliers the full amounts due
1959 from customers for generation services in a time period consistent with the average payment
1960 period of the participating class of customer, less a percentage of such amounts that reflects the
1961 average of the uncollectible bills for the participating customer classes of the electric
1962 distribution company and other reasonable development, operating or carrying costs incurred, as
1963 approved by the department.

1964

1965 SECTION 61. Subsection (c) of section 1E of said chapter 164, as so appearing, is
1966 hereby amended by striking out, in line 34, the figure "2" and inserting in place thereof the
1967 following figure:- 2.5.

1968

1969 SECTION 62. Section 1F of said chapter 164, as so appearing, is hereby amended by
1970 striking out, in line 90, the word "division" and inserting in place thereof the following word:-
1971 department.

1972

1973 SECTION 63. Subparagraph (i) of paragraph (4) of section 1F of said chapter 164, as so
1974 appearing, is hereby amended by striking out the second paragraph.

1975

1976 SECTION 64. Said paragraph (4) of said section 1F of said chapter 164, as so
1977 appearing, is hereby further amended by striking out subparagraphs (ii) and (iii) and inserting in
1978 place thereof the following subparagraph:-

1979 (ii) A residential customer eligible for low-income discount rates shall receive the
1980 service on demand. Each distribution company shall periodically notify all customers of the
1981 availability and method of obtaining low-income discount rates. An existing residential
1982 customer eligible for a low-income discount on the date of the start of retail access who orders

1983 service for the first time from a distribution company shall be offered basic service by that
1984 distribution company.

1985

1986 SECTION 65. Section 1G of said chapter 164, as so appearing, is hereby amended by
1987 striking out, in lines 366 and 367, the words “government regulations” and inserting in place
1988 thereof the following words:- telecommunications, utilities and energy.

1989

1990 SECTION 66. Section 47C of said chapter 164, as so appearing, is hereby amended by
1991 adding the following subsection:-

1992 (l) The activities of a municipal lighting plant cooperative shall not be imputed to its
1993 individual members and the provision of energy brokering and other energy-related services by
1994 a municipal lighting plant cooperative to retail customers without any accompanying sale of
1995 electricity to such retail customers shall not constitute the supply of generation services by its
1996 members for the purposes of subsection (b) of section 47A.

1997

1998 SECTION 67. Section 76D of said chapter 164, as so appearing, is hereby amended by
1999 inserting after the word “companies”, in lines 1 and 2, in line 14, the third time it appears, and in
2000 line 20, the second time it appears, the following words:- , steam distribution companies.

2001

2002 SECTION 68. Said section 76D of said chapter 164, as so appearing, is hereby amended
2003 by inserting after the word “company”, in line 9, the following words:- , steam distribution
2004 company.

2005

2006 SECTION 69. Said chapter 164 is hereby further amended by striking out section 96, as
2007 so appearing, and inserting in place thereof the following section:-

2008 Section 96. Companies, except steam distribution companies, subject to this chapter and
2009 their holding companies may, notwithstanding any other provisions of this chapter or of any
2010 general or special law, consolidate or merge with one another, or may sell and convey their
2011 properties to another of such companies or to a wholesale generation company and such other
2012 company may purchase such properties if such purchase, sale, consolidation or merger, and the
2013 terms thereof, have been approved, at meetings called therefor, by vote of the holders of at least

2014 two-thirds of each class of stock outstanding and entitled to vote on the question of each of the
2015 contracting companies, and that the department, after notice and a public hearing, has
2016 determined that such purchase and sale or consolidation or merger, and the terms thereof, are
2017 consistent with the public interest; provided, however, that in making such a determination the
2018 department shall at a minimum consider: proposed rate changes, if any; the long term strategies
2019 that will assure a reliable, cost effective energy delivery system; any anticipated interruptions in
2020 service; or other factors which may negatively impact customer service; and provided further,
2021 that the purchase or sale of properties by, or the consolidation or merger of, wholesale
2022 generation companies shall not require departmental approval.

2023

2024 SECTION 70. Section 116 of said chapter 164, as so appearing, is hereby amended by
2025 inserting after the word “secretary”, in line 2, the following words:- or municipal lighting plant
2026 manager.

2027

2028 SECTION 71. Said section 116 of said chapter 164, as so appearing, is hereby further
2029 amended by inserting after the word “removal,”, in lines 11 and 12, the following words:- the
2030 gas or electric company employing.

2031

2032 SECTION 72. Said section 116 of said chapter 164, as so appearing, is hereby further
2033 amended by striking out, in line 16, the word “such” and inserting in place thereof the
2034 following words:- a duly authorized.

2035

2036 SECTION 73. Said section 116 of said chapter 164, as so appearing, is hereby further
2037 amended by adding the following sentence:- A gas or electric company may direct a duly
2038 authorized employee to restore meters, pipes, wires, fittings, works or service, consistent with
2039 the local bargaining agreement entered into by the company and the local bargaining unit to
2040 which the employee belongs.

2041

2042 SECTION 74. Section 134 of said chapter 164, as so appearing, is hereby amended by
2043 striking out, in lines 31, 51 and 75, the word “division” and inserting in place thereof, in each
2044 instance, the following word:- department.

2045

2046 SECTION 75. The fourth paragraph of section 134 of said chapter 164, as so
2047 appearing, is hereby amended by striking out the last sentence.

2048

2049 SECTION 76. Said section 134 of said chapter 164, as so appearing, is hereby further
2050 amended by striking out, in lines 56 and 64, the words “standard offer” and inserting in place
2051 thereof, in each instance, the following word:- basic.

2052

2053 SECTION 77. Said section 134 of said chapter 164, as so appearing, is hereby further
2054 amended by striking out, in line 74, the words “standard offer” and inserting in place thereof the
2055 following words:- basic service.

2056

2057 SECTION 78. Said chapter 164 is hereby further amended by adding the following 6
2058 sections:-

2059 Section 138. As used in this section and sections 139 and 140, the following words shall,
2060 unless the context otherwise requires, have the following meanings:-

2061 “Agricultural net metering facility”, a renewable energy generating facility operated as
2062 part of an agricultural business that generates electricity that does not have a generation capacity
2063 of more than 2 megawatts and is located on land owned or controlled by the agricultural
2064 business and is used to provide energy to metered accounts of the business.

2065 “Agriculture”, the same meaning as provided in section 1A of chapter 128; provided,
2066 however, that when necessary, the commissioner of agricultural resources shall determine if a
2067 business is an agricultural business.

2068 “Class I net metering credit”, a credit equal to the excess kilowatt-hours by time of use
2069 billing period, if applicable, multiplied by the sum of the distribution company’s: (i) default
2070 service kilowatt-hour charge in the ISO-NE load zone where the customer is located; (ii)
2071 distribution kilowatt-hour charge; (iii) transmission kilowatt-hour charge; and (iv) transition
2072 kilowatt-hour charge; provided, however, that this shall not include the demand side
2073 management and renewable energy kilowatt-hour charges set forth in sections 19 and 20 of
2074 chapter 25; and provided further, that credit for a Class I net metering facility not using solar or
2075 wind as its energy source shall be the average monthly clearing price at the ISO-NE.

2076 “Class I net metering facility”, a plant or equipment that is used to produce, manufacture
2077 or otherwise generate electricity and that is not a transmission facility and that has a design
2078 capacity of 60 kilowatts or less.

2079 “Class II net metering credit”, a credit equal to the excess kilowatt-hours by time of use
2080 billing period, if applicable, multiplied by the sum of the distribution company’s: (i) default
2081 service kilowatt-hour charge in the ISO-NE load zone where the customer is located; (ii)
2082 distribution kilowatt-hour charge; (iii) transmission kilowatt-hour charge; and (iv) transition
2083 kilowatt-hour charge; provided, however, that this shall not include the demand side
2084 management and renewable energy kilowatt-hour charges set forth in sections 19 and 20 of
2085 chapter 25.

2086 “Class II net metering facility”, an agricultural net metering facility, solar net metering
2087 facility, or wind net metering facility with a generating capacity of more than 60 kilowatts but
2088 less than or equal to 1 megawatt; provided, however, that a Class II net metering facility owned
2089 or operated by a customer which is a municipality or other governmental entity may have a
2090 generating capacity of more than 60 kilowatts but less than or equal to 1 megawatt per unit.

2091 “Class III net metering credit”, a credit equal to the excess kilowatt-hours by time of use
2092 billing period, if applicable, multiplied by the sum of the distribution company’s: (i) default
2093 service kilowatt-hour charge in the ISO-NE load zone where the customer is located; (ii)
2094 transmission kilowatt-hour charge; and (iii) transition kilowatt-hour charge; provided, however,
2095 that if a customer is a municipality or other governmental entity, the credit shall be equal to the
2096 excess kilowatt-hours multiplied by the sum of (i), (iii) and (iii) and the distribution kilowatt-
2097 hour charge; and provided further, that this shall not include the demand side management and
2098 renewable energy kilowatt-hour charges set forth in sections 19 and 20 of chapter 25.

2099 “Class III net metering facility”, an agricultural net metering facility, solar net metering
2100 facility, or wind-net-metering facility with a generating capacity of more than 1 megawatt but
2101 less than or equal to 2 megawatts; provided, however, that a Class III net metering facility
2102 owned or operated by a customer which is a municipality or other governmental entity may
2103 have a generating capacity of more than 1 megawatt but less than or equal to 2 megawatts per
2104 solar net metering or wind net metering unit.

2105 “Customer”, a customer of a distribution company that is entitled to the net metering
2106 credits, including net metering facilities.

2107 “Neighborhood”, a geographic area including and limited to a unique community of
2108 interests that is recognized as such by residents of such area and which, in addition to residential
2109 and undeveloped properties, may encompass commercial properties.

2110 “Neighborhood net metering credit”, a credit equal to the excess kilowatt-hours by time
2111 of use billing period, if applicable, multiplied by the sum of the distribution company’s: (i)
2112 default service kilowatt-hour charge in the ISO-NE load zone where the customer is located; (ii)
2113 transmission kilowatt-hour charge; and (iii) transition kilowatt-hour charge; provided, however,
2114 that this shall not include the demand side management and renewable energy kilowatt-hour
2115 charges set forth in sections 19 and 20 of chapter 25.

2116 “Neighborhood net metering facility”, a Class I, II or III net metering facility that: (i) is
2117 owned by, or serves the energy needs of, a group of 10 or more residential customers that
2118 resides in a single neighborhood and is served by a single distribution company; and (ii) is
2119 located within the same neighborhood as the customers that own or are served by the facility.

2120 “Net metering”, the process of measuring the difference between electricity delivered by
2121 a distribution company and electricity generated by a Class I, Class II, Class III or neighborhood
2122 net metering facility and fed back to the distribution company.

2123 “Renewable energy”, energy generated from any source that qualifies as a Class I or
2124 Class II renewable energy generating source under section 11F of chapter 25A; provided,
2125 however, that after conducting administrative proceedings, the department of energy resources,
2126 in consultation with the department of agriculture, may add technologies or technology
2127 categories.

2128 “Solar net metering facility”, a facility for the production of electrical energy that uses
2129 sunlight to generate electricity and is interconnected to a distribution company.

2130 “Wind net metering facility”, a facility for the production of electrical energy that uses
2131 wind to generate electricity and is interconnected to a distribution company.

2132 Section 139. (a) A distribution company customer that uses electricity generated by a
2133 Class I or Class II net metering facility may elect net metering as follows:

2134 (1) If the electricity generated by the Class I or Class II net metering facility during a
2135 billing period exceeds the customer’s kilowatt-hour usage during the billing period, the
2136 customer shall be billed for 0 kilowatt-hour usage and the excess Class I or Class II net metering
2137 credits shall be credited to the customer’s account. Credits may be carried forward from month

2138 to month. A Class I or Class II wind or solar net metering facility may designate customers of
2139 the same distribution company to which the Class I or Class II wind or solar net metering
2140 facility is interconnected and that are located in the same ISO-NE load zone to receive such
2141 credits in amounts attributed by the Class I or Class II wind or solar net metering facility.
2142 Written notice of the identities of the customers so designated and the amounts of the credits to
2143 be attributed to such customers shall be in a form as the distribution company shall reasonably
2144 require.

2145 (2) If the customer's kilowatt-hour usage exceeds the electricity generated by the Class I
2146 or Class II net metering facility during the billing period, the customer shall be responsible for
2147 the balance at the distribution company's applicable rate.

2148 (b) A distribution company customer that uses electricity generated by a Class III net
2149 metering facility may elect net metering as follows:

2150 (1) If the electricity generated by the Class III net metering facility during a billing
2151 period exceeds the customer's kilowatt-hour usage during the billing period, the customer shall
2152 be billed for 0 kilowatt-hour usage and the excess Class III net metering credits shall be credited
2153 to the customer's account. Credits may be carried forward from month to month. A Class III
2154 net metering facility may designate customers of the same distribution company to which the
2155 Class III net metering facility is interconnected and that are located in the same ISO-NE load
2156 zone to receive such credits in amounts attributed to such customers by the Class III net
2157 metering facility. Written notice of the identities of the customers so designated and the
2158 amounts of the credits to be attributed to such customers shall be in a form as the distribution
2159 company shall reasonably require. A distribution company may elect not to allocate such credits
2160 and instead may purchase net metering credits from the facility at the rates provided for in this
2161 subsection.

2162 (2) If the customer's kilowatt-hour usage exceeds the electricity generated by the Class
2163 III net metering facility during the billing period, the customer shall be responsible for the
2164 balance at the distribution company's applicable rate.

2165 (c) The distribution portion of any Class I, Class II or Class III net metering credits and
2166 distribution company delivery charges displaced by a Class I, Class II or Class III net metering
2167 facility shall be aggregated by the distribution company and billed to all customers on an annual
2168 basis through a uniform per kilowatt-hour surcharge or surcharges.

2169 (d) The distribution company shall impose tariffs, as may be approved from time to time
2170 by the department, regarding necessary interconnection studies and the type, costs and
2171 timeframe for installing metering and distribution system upgrades to accommodate these
2172 installations. Such tariffs shall require that all facilities maintain adequate insurance.
2173 Distribution companies shall be prohibited from imposing special fees on Class I
2174 net metering facilities, such as backup charges and demand charges, or additional controls or
2175 liability insurance, as long as the facility meets the other requirements of the interconnection
2176 tariff and all relevant safety and power quality standards.

2177 Before providing net metering service under this section, a Class II or III net metering
2178 facility shall provide all necessary information to, and cooperate with, the distribution utility to
2179 which it is interconnected to enable the distribution utility to obtain the appropriate asset
2180 identification for reporting generation to ISO-NE.

2181 (e) A Class I, II or III net metering facility or net metering customer shall not be: an
2182 electric utility, generation company, aggregator, supplier, energy marketer or energy broker,
2183 within the meaning of those terms as defined in sections 1 and 1F.

2184 (f) The aggregate capacity of net metering shall not exceed 1 per cent of the distribution
2185 company's peak load. For the purpose of calculating the aggregate capacity, the capacity of a
2186 solar net metering facility shall be 80 per cent of the facility's direct current rating at standard
2187 test conditions and the capacity of a wind net metering facility shall be the nameplate rating.

2188 (g) The department shall adopt rules and regulations necessary to carry out this section.

2189 Section 140. A neighborhood net metering facility shall elect net metering as follows:

2190 (a) If the electricity generated by the neighborhood net metering facility during a billing
2191 period exceeds its kilowatt-hour usage during the billing period, the neighborhood net metering
2192 facility shall be billed for 0 kilowatt-hour usage and the excess neighborhood net metering
2193 credits shall be credited to those customers identified by the neighborhood net metering facility
2194 as being served by the same company to which the neighborhood net metering facility is
2195 interconnected, residing in the same neighborhood in which the neighborhood net metering
2196 facility is located and having an ownership interest in the neighborhood net metering facility.
2197 The amount of the excess neighborhood net metering credits to be attributed to each such
2198 customer shall be determined by the allocation provided by the neighborhood net metering
2199 facility. Credits may be carried forward by such customers from month to month. Written

2200 notice of the identity of the customers so designated and the allocation of the credits to be
2201 attributed to such customers shall be in such form as the distribution company shall reasonably
2202 require.

2203 (b) The department shall adopt rules and regulations necessary to carry out this section,
2204 including, but not limited to, further defining the term “neighborhood” and limiting the number
2205 of customers that may be designated by neighborhood net metering facilities to receive
2206 neighborhood net metering credits.

2207 Section 141. In all decisions or actions regarding rate designs, the department shall
2208 consider the impacts of such actions, including the impact of new financial incentives on the
2209 successful development of energy efficiency and on-site generation. Where the scale of on-site
2210 generation would have an impact on affordability for low-income customers, a fully
2211 compensating adjustment shall be made to the low-income rate discount.

2212 Section 142. The department shall continue to remove any impediments to the
2213 development of efficient, low-emissions distributed generation, including combined heat and
2214 power, taking into account the need to appropriately allocate any associated costs in a fair and
2215 equitable manner. For the purposes of this section, “efficient, low-emissions” shall mean an
2216 efficiency of 60 per cent or greater on an annual basis and emissions lower than required by the
2217 department of environmental protection.

2218 Section 143. (a) For the purposes of this section, the term “small municipal renewable
2219 energy generating facility” shall mean a generating unit that is designed for, or capable of,
2220 operating at a gross capacity of less than 10 megawatts and that qualifies as a Class I renewable
2221 energy generating source under section 11F of chapter 25A.

2222 (b) Notwithstanding any general or special law to the contrary, a municipality may
2223 design, install, own and operate small municipal renewable energy generating facilities, sell any
2224 electricity generated from such facilities and sell any other marketable products resulting from
2225 its generation of renewable energy at such facilities, including electronic certificates created to
2226 represent the generation attributes, as defined in 225 CMR 14.02, of each megawatt hour of
2227 energy generated by the renewable energy facilities; provided, however, that no later than 15
2228 days after the initiation of a procurement of services, equipment or materials related to a small
2229 municipal renewable energy generating facility and again no later than 15 days after the date
2230 that such small municipal renewable energy generating facility first produces electrical energy,

2231 said municipality shall submit a report to the department of public utilities and the department
2232 of energy resources detailing the costs of the small municipal renewable energy generating
2233 facility and a plan and forecast for the disposition of the facility's products. The department of
2234 energy resources shall annually issue a report containing information on small municipal
2235 renewable energy generating facilities, including the number, capacity, production and
2236 performance of such facilities and recommendations, if any, for additional legislative action to
2237 increase the benefits available to municipalities through ownership of renewable energy
2238 generating facilities. The department of energy resources shall submit such report, including
2239 drafts of legislation to implement recommendations within such report, to the joint committee
2240 on telecommunications, utilities and energy and the senate and house committees on ways and
2241 means not later than April 30 of each year.

2242 (c) A municipality may issue from time to time bonds or notes in order to finance all or a
2243 portion of the costs of small municipal renewable energy generating facility projects authorized
2244 under this section. Notwithstanding any provision of chapter 44 to the contrary, the maturities
2245 of any such bonds issued by a municipality hereunder either shall be arranged so that for each
2246 issue the annual combined payments of principal and interest payable in each year, commencing
2247 with the first year in which a principal payment is required, shall be as nearly equal as
2248 practicable in the opinion of the municipal treasurer or shall be arranged in accordance with a
2249 schedule providing for a more rapid amortization of principal. The first payment of principal of
2250 each issue of bonds or of any temporary notes issued in anticipation of the bonds shall be not
2251 later than 5 years after the anticipated date of commencement of the regular operation of the
2252 small municipal renewable energy generating facilities financed thereby, as determined by the
2253 municipal treasurer, and the last payment of principal of the bonds shall be not later than 25
2254 years from the date of the bonds. Indebtedness incurred under this section shall not be included
2255 in determining the limit of indebtedness of a municipality under section 10 of said chapter 44
2256 but, except as otherwise provided in this subsection, shall be subject to the provisions of said
2257 chapter 44.

2258 (d) A municipality shall procure any services required for the design, installation,
2259 improvement, repair and operation of small municipal renewable energy generating facilities
2260 authorized under this section, and acquire any equipment necessary in connection therewith, in
2261 accordance with the procurement requirements of chapter 30B as applicable. A municipality

2262 may procure any such services and equipment together as 1 procurement or as separate
2263 procurements thereunder.

2264 (e) A municipality may establish an enterprise fund under section 53F1/2 of chapter 44
2265 for the receipt of all revenues from the operation of small municipal renewable energy
2266 generating facilities authorized under this section to operate and all moneys received for the
2267 benefit of such small municipal renewable energy generating facilities, other than the proceeds
2268 of bonds or notes issued therefor. Such receipts shall be used to pay the costs of operation and
2269 maintenance of the small municipal renewable energy generating facilities, to pay the costs of
2270 future improvements and repairs thereto and to pay the principals and interest on any bonds or
2271 notes issued therefor.

2272

2273 SECTION 79. The General Laws are hereby further amended by inserting after chapter
2274 164A the following chapter:-

2275

2276

CHAPTER 164B.

2277

2278

REGULATION OF STEAM DISTRIBUTION COMPANIES.

2279

2280 Section 1. For purposes of this chapter, the term “department” shall refer to the
2281 department of public utilities. The department shall have supervision of facilities operated by
2282 steam distribution companies for the sole purpose of ensuring public safety and shall establish
2283 reasonable rules and regulations pertaining to the construction and operation of steam
2284 distribution facilities and equipment used in manufacturing and transporting steam. The
2285 department shall keep itself informed as to the methods, practices, and condition of all facilities
2286 and equipment associated with the distribution of steam, including ducts and conduits, and shall
2287 make such examinations and investigations of the steam distribution system as necessary,
2288 including the adequacy of operation, maintenance and capital improvements to insure safe
2289 operation of facilities operated by a steam distribution company.

2290

2291

2292

Section 2. Each steam distribution company shall file a certified copy of its certificate
of incorporation and bylaws with the department. By March first of each year each company
shall file a report on safety related matters as the department may specify, including but not

2293 limited to number, duration and causes of all steam leakage incidents, distribution system
2294 accidents and service outages, time elapsed between the incident and the return to service
2295 following a repair. The department may levy fines against a steam distribution company for
2296 failure to comply with regulations promulgated by the department. In determining the
2297 appropriateness of any fine, the department shall consider the seriousness of the violation and
2298 the good faith compliance efforts of the steam distribution company.

2299 Section 3. The department shall provide written notice to the attorney general of any
2300 violation of this chapter. The department's authority shall not diminish the authority of any
2301 municipality to regulate steam distribution, nor shall it diminish the authority of the department
2302 of public safety under chapter 146.

2303 Section 4. Any entity operating a steam distribution system that does not meet the
2304 definition of a steam distribution company set forth in section 1 of chapter 164 shall be exempt
2305 from the requirements of this chapter and section 18A of chapter 25 if that the entity files a
2306 detailed inspection and maintenance plan with the department every 2 years.

2307
2308 SECTION 80. Section 17B of chapter 271 of the General Laws, as appearing in the
2309 2006 Official Edition, is hereby amended by striking out, in lines 4 and 5, the words "energy, as
2310 defined in paragraph (d) of section twelve of chapter one hundred and fifty-nine" and inserting
2311 in place thereof the following words:- cable or the department of public utilities.

2312
2313 SECTION 81. Section 22 of chapter 140 of the acts of 2005 is hereby amended by
2314 striking out the words "11C of chapter 25" and inserting in place thereof the following words:-
2315 11I of chapter 25A.

2316
2317 SECTION 82. Section 23 of said chapter 140 is hereby amended by striking out the
2318 words "11C of chapter 25" and inserting in place thereof the following words:- 11I of chapter
2319 25A.

2320
2321 SECTION 83. Commencing on July 1, 2009, and continuing for a period of 5 years
2322 thereafter, each distribution company, as defined in section 1 of chapter 164 of the General
2323 Laws, shall be required twice in that 5 year period to solicit proposals from renewable energy

2324 developers and, provided reasonable proposals have been received, enter into cost-effective
2325 long-term contracts to facilitate the financing of renewable energy generation within the
2326 jurisdictional boundaries of the commonwealth, including state waters, or in adjacent federal
2327 waters. Distribution companies may also voluntarily solicit additional proposals over the 5 year
2328 period. The timetable and method for solicitation and execution of such contracts shall be
2329 proposed by the distribution company in consultation with the department of energy resources
2330 and shall be subject to review and approval by the department of public utilities. This long-term
2331 contracting obligation shall be separate and distinct from the electric distribution companies'
2332 obligation to meet applicable annual renewable portfolio standard, hereinafter referred to as
2333 RPS, requirements, set forth in section 11F of chapter 25A of the General Laws.

2334 For purposes of this section, a long-term contract is defined as a contract with a term of
2335 10 to 15 years. In developing the provisions of proposed long term contracts, the distribution
2336 company shall consider multiple contracting methods, including long-term contracts for
2337 renewable energy certificates, hereinafter referred to as RECs, for energy, and for a combination
2338 of both RECs and energy. The electric distribution company shall select a reasonable method of
2339 soliciting proposals from renewable energy developers, which may include public solicitations,
2340 individual negotiations or other methods. The distribution company may decline to consider
2341 contract proposals having terms and conditions that it determines would require the contract
2342 obligation to place an unreasonable burden on the distribution company's balance sheet. The
2343 distribution company shall consult with the department of energy resources regarding its choice
2344 of contracting methods and solicitation methods. All proposed contracts shall be subject to the
2345 review and approval of the department of public utilities.

2346 The department of public utilities and the department of energy resources each shall
2347 adopt regulations consistent with this section. The regulations shall: (a) allow renewable energy
2348 developers to submit proposals for long-term contracts conforming to the contracting methods
2349 specified in the second paragraph; (b) require that contracts executed by the distribution
2350 company under such proposals are filed with, and approved by, the department of public
2351 utilities before they become effective; (c) provide for an annual remuneration for the contracting
2352 distribution company equal to 4 per cent of the annual payments under the contract to
2353 compensate the company for accepting the financial obligation of the long-term contract, such
2354 provision to be acted upon by the department of public utilities at the time of contract approval;

2355 and (d) require that the renewable energy generating source to be used by a developer under the
2356 proposal meet the following criteria: (1) have a commercial operation date, as verified by the
2357 department of energy resources, on or after January 1, 2008; (2) be qualified by the department
2358 of energy resources as eligible to participate in the RPS program, under said section 11F of
2359 chapter 25A, and to sell RECs under the program; and (3) be determined by the department of
2360 public utilities to: (i) provide enhanced electricity reliability within the commonwealth; (ii)
2361 contribute to moderating system peak load requirements; (iii) be cost effective to Massachusetts
2362 electric ratepayers over the term of the contract; and (iv) where feasible, create additional
2363 employment in the commonwealth. As part of its approval process, the department of public
2364 utilities shall consider the attorney general's recommendations, which shall be submitted to the
2365 department of public utilities within 45 days following the filing of such contracts with the
2366 department of public utilities. The department of public utilities shall take into consideration
2367 both the potential costs and benefits of such contracts, and shall approve a contract only upon a
2368 finding that it is a cost effective mechanism for procuring renewable energy on a long-term
2369 basis.

2370 Distribution companies shall not be obligated to enter into long-term contracts under this
2371 section that would, in the aggregate, exceed 3 per cent of the total energy demand from all
2372 distribution customers in the service territory of the distribution company. As long as the
2373 electric distribution company has entered into long term contracts in compliance with this
2374 section, it shall not be required by regulation or order to enter into contracts with terms of more
2375 than 3 years in meeting its applicable annual RPS requirements set forth in said section 11F of
2376 said chapter 25A, unless the department of public utilities finds that such contracts are in the
2377 best interest of customers; provided, however, that the electric distribution company may
2378 execute such contracts voluntarily, subject to the department of public utilities' approval.

2379 An electric distribution company may elect to use any energy purchased under such
2380 contracts for resale to its customers, and may elect to retain RECs for the purpose of meeting
2381 the applicable annual RPS requirements set forth in said section 11F of said chapter 25A. If the
2382 energy and RECs are not so used, such companies shall sell such purchased energy into the
2383 wholesale spot market and shall sell such purchased RECs through a competitive bid process.
2384 Notwithstanding the foregoing, the department of energy resources shall conduct periodic
2385 reviews to determine the impact on the energy and REC markets of the disposition of energy

2386 and RECs hereunder, and may issue reports recommending legislative changes if it determines
2387 that actions are being taken that will adversely affect the energy and REC markets.

2388 If the distribution company sells the purchased energy into the wholesale spot market
2389 and auctions the RECs as described in the fifth paragraph, the distribution company shall net the
2390 cost of payments made to projects under the long-term contracts against the proceeds obtained
2391 from the sale of energy and RECs, and the difference shall be credited or charged to all
2392 distribution customers through a uniform fully reconciling annual factor in distribution rates,
2393 subject to review and approval of the department of public utilities. The reconciliation process
2394 shall be designed so that the distribution company recovers all costs incurred under such
2395 contracts.

2396 If the RPS requirements of said section 11F of said chapter 25A should ever terminate,
2397 the obligation to continue periodic solicitations to enter into long term contracts shall cease, but
2398 contracts already executed and approved by the department of public utilities shall remain in
2399 full force and effect.

2400 On or before July 1, 2010, and annually until the long-term contracting requirement
2401 expires, the department of energy resources shall assess whether the long-term contracting
2402 requirements set forth in this section reasonably support the renewable energy goals of the
2403 commonwealth as set forth in said section 11F of said chapter 25A, and whether the alternative
2404 compliance rate established under said section 11F should be adjusted accordingly.

2405 The provisions of this section shall not limit consideration of other contracts for RECs or
2406 power submitted by a distribution company for review and approval by the department of public
2407 utilities.

2408 If any provision of this section is subject to a judicial challenge, the department of public
2409 utilities may suspend the applicability of the challenged provision during the pendency of the
2410 judicial action until final resolution of the challenge and any appeals, and shall issue such orders
2411 and take such other actions as are necessary to ensure that the provisions that are not challenged
2412 are implemented expeditiously to achieve the public purposes of this provision.

2413
2414 SECTION 84. The secretary of energy and environmental affairs shall, in conjunction
2415 with the department of public utilities, implement an “energy pay and save”, hereinafter referred
2416 to as EPS, pilot program, allowing electric utility customers to purchase and install energy

2417 efficient or renewable energy products in their residences or commercial facilities by paying the
2418 cost of the system over time through an additional charge on the customer's electricity bill. The
2419 cost of the products purchased under the pilot program shall be added to the electric utility
2420 customer's utility bills in a form approved by the department, as a monthly EPS tariff, and shall
2421 be paid until the cost of purchase and installation of the products is paid off. The payment
2422 structure shall be implemented so that the charge on the electric utility customer's utility bill
2423 shall be less than that customer's energy savings over the course of each given year. Non-
2424 payment by the owner of the EPS tariff shall result in disconnection and a utility shall be
2425 entitled to recover the debt.

2426 The pilot program shall be established with a minimum of 50 participants and a
2427 maximum of 200 participants. The maximum project size for the program shall be \$1,000 for
2428 commercial utility customers and \$500 for residential utility customers. Portable electrical cost
2429 measures shall not be funded. Quick pay options shall be investigated, allowing customers to
2430 have the option to pay off the entire balance of the amount financed on the first billing cycle.
2431 The program shall be funded from such sources as determined by the secretary of energy and
2432 environmental affairs and such funds shall be used to offset the cost of the program for the
2433 utilities, and as such payments for the purchases are paid to said utilities.

2434 The pilot program shall be implemented on or before April 1, 2009, and shall expire on
2435 December 31, 2009. The secretary and the department shall issue a final report, which shall
2436 include the results of its review and analysis, to the joint committee on telecommunications,
2437 utilities and energy and the house and senate committees on ways and means on or before
2438 July 31, 2010.

2439
2440 SECTION 85. On or before April 1, 2009, each electric distribution company shall file
2441 a proposed plan with the department of public utilities to establish a smart grid pilot program.
2442 Each such pilot program shall utilize advanced technology to operate an integrated grid network
2443 communication system in a limited geographic area. Each pilot program shall include, but not
2444 be limited to advanced ("smart") meters that provide real time measurement and communication
2445 of energy consumption, automated load management systems embedded within current demand-
2446 side management programs and remote status detection and operation of distribution system
2447 equipment. On or before April 1, 2009, each electric distribution company shall file a proposal

2448 with the department of public utilities to implement a pilot program that requires time of use or
2449 hourly pricing for commodity service for a minimum of 0.25 per cent of the company's
2450 customers. A specific objective of the pilot shall be to reduce, for those customers who actively
2451 participate in the pilot, peak and average loads by a minimum of 5 per cent. The department
2452 shall work with the electric distribution companies to identify specific areas of study, and may
2453 incorporate and utilize information from past relevant studies or pilot programs. The
2454 department shall review and approve or modify such plans on or before August 1, 2010. Plans
2455 which provide for larger numbers of customers and can show higher bill savings than outlined
2456 above shall be eligible to earn incentives as outlined in an approved plan. The programs filed
2457 by the distribution company shall include proposals for rate treatment of incremental program
2458 costs; provided, however, that such program costs shall be deemed by the department to be a
2459 cost of basic service and recovered in rates charged for basic service. Following the completion
2460 of the pilot programs, the secretary of energy and environmental affairs shall submit a report to
2461 the joint committee on telecommunications, utilities and energy not later than September 1,
2462 2012 detailing the operation and results of such programs, including information concerning
2463 changes in consumer's energy use patterns, an assessment of the value of the program to both
2464 participants and non-participants and recommendations concerning modification of the
2465 programs and further implementation.

2466
2467 SECTION 86. The department of public utilities shall direct all distribution companies,
2468 as defined in section 1F of chapter 164 of the General Laws, to submit a plan within 60 days of
2469 the effective date of this act providing for retail access to competitive sellers of renewable
2470 energy generation attributes, whether or not bundled with electricity. The department shall
2471 approve or modify such plan after an opportunity for notice and comment by all interested
2472 persons and shall ensure that such plan does not provide distribution companies with a market
2473 advantage over competitive suppliers of renewable energy generation attributes; provided,
2474 however, that if a distribution company provides retail access to competitive sellers of
2475 renewable energy generation attributes before the effective date of this act, it shall not be
2476 required to file a plan under this section.

2477

2478 SECTION 87. There is hereby established a special commission to consist of 3
2479 members of the senate, 1 of whom shall be the senate chair for the joint committee on
2480 telecommunications, utilities and energy who shall serve as co-chair, and 1 of whom shall be
2481 appointed by the senate minority leader; 3 members of the house of representatives, 1 of whom
2482 shall be the house chair for the joint committee on telecommunications, utilities and energy who
2483 shall serve as co-chair, and 1 of whom shall be appointed by the house minority leader; the
2484 commissioner of energy resources or a designee; the secretary of energy and environmental
2485 affairs or a designee; and 3 persons to be appointed by the governor, 1 of whom shall be a
2486 representative of the waste-to-energy industry, and 1 of whom shall be a representative of a
2487 consumer advocacy organization, for the purpose of making an investigation and study relative
2488 to the burning of construction and demolition waste as it relates to the renewable energy
2489 portfolio standard program established by section 11F of chapter 25A of the General Laws. The
2490 commission shall report the results of its investigation and study and its recommendations, if
2491 any, together with drafts of legislation necessary to carry its recommendations into effect by
2492 filing the same with the clerks of the senate and the house of representatives on or before July 1,
2493 2009.

2494
2495 SECTION 88. There shall be a green building plan commission to examine the
2496 environmental and economic impact of establishing a green building plan for the
2497 commonwealth. The members of the commission shall be as follows: the commissioner of
2498 energy resources or a designee; the director of housing and community development or a
2499 designee; the secretary of environmental affairs or a designee; the secretary of administration
2500 and finance or a designee; 2 members of the senate, 1 of whom shall be appointed by the senate
2501 minority leader; 2 members of the house of representatives, 1 of whom shall be appointed by the
2502 house minority leader; the lieutenant governor or a designee, who shall be the chair of the
2503 commission; 1 person to be appointed by the Worcester Polytechnic Institute; 1 person to be
2504 appointed by the chancellor of the University of Massachusetts at Lowell; 1 person to be
2505 appointed by the president of the Massachusetts Institute of Technology; the director of the
2506 Massachusetts Technology Collaborative or a designee; 1 person to be appointed by the
2507 commissioner of the revenue; 1 person appointed by the Massachusetts Municipal Association;
2508 and a representative of the Boston Society of Architects. The chair shall have no vote except in

2509 the event of a tie vote. The commission shall file a report of its findings with the clerks of the
2510 senate and house of representatives not later than December 31, 2009.

2511

2512 SECTION 89. There shall be a commission which shall study the siting of energy
2513 facilities in the commonwealth. The study shall include, but not be limited to, the following: (a)
2514 the development of a procedure for coordinating and consolidating applications to construct
2515 generating facilities between and among the energy facilities siting board, the department of
2516 environmental protection and other appropriate agencies, to enable one-stop shopping for
2517 necessary permits or certificates or other appropriate streamlining of the permitting system; (b)
2518 the expansion of such coordinated procedures to other energy facilities, if appropriate; (c)
2519 possible changes to the energy facilities siting board's procedures for reviewing electric and gas
2520 transmission lines in light of recent and proposed changes in the structure and regulation of the
2521 electric and gas industries, including regional approaches to the siting of such facilities; (d)
2522 clarification of the energy facilities siting board's jurisdiction over the re-powering of existing
2523 generating facilities at existing sites and the appropriate standards for reviewing such re-
2524 powerings; (e) the development of coordinated procedures to examine the reuse of existing
2525 industrial sites for the development of generating facilities; (f) the issue of application fees paid
2526 by developers to the energy facilities siting board and the correlation of such fees to the board's
2527 procedures, as statutorily revised under this act, in reviewing such applications; provided,
2528 however, that the study shall include, but not be limited to, recommendations, if any, on
2529 reducing the application fee paid by developers to the board in light of the board's statutorily
2530 revised standards of review of such applications under this act; (g) the establishment of a site
2531 characterization and suitability commission within the department of environmental protection,
2532 which would promulgate criteria to be applied to sites included in an application before the
2533 energy facilities siting board and rule on suitability of a proposed site as before the application
2534 is approved; and (h) the possibility of requiring applicants to provide either (1) evidence that the
2535 proposed facility would employ the best available and most efficient technology to control and
2536 reduce water withdrawals, or (2) a description of the environmental impacts, costs and
2537 reliability of the water withdrawal method chosen and an explanation of why the proposed
2538 technology was chosen; (i) whether current laws and regulations do not adequately facilitate the
2539 siting of renewable and alternative energy facilities, or whether they make it more difficult to

2540 site renewable energy facilities than fossil-fueled energy facilities, and, if either is the case, to
2541 make recommendations for changes to such laws and regulations; and (j) whether renewable
2542 and alternative energy generating facilities other than a waste-to-energy facility should be
2543 allowed as of right on property zoned for industrial use.

2544 The commission shall consist of the secretary of energy and environmental affairs or a
2545 designee, who shall be the chair of the commission; the secretary of housing and economic
2546 development or a designee; the commissioner of energy resources or a designee; the
2547 commissioner of environmental protection or a designee; the commissioner of conservation and
2548 recreation or a designee; the director of coastal zone management or a designee; the director of
2549 the department of fish and game or a designee; 1 member of the energy facilities siting board; 3
2550 members of the house of representatives, 1 of whom shall be appointed by the house minority
2551 leader; 3 members of the senate, 1 of whom shall be appointed by the senate minority leader; 1
2552 representative of the gas industry; and 2 representatives of ratepayers, 1 of whom shall be
2553 appointed by the speaker of the house and 1 of whom shall be appointed by the senate president;
2554 and the following members who shall be appointed by the chair of the commission: 1 municipal
2555 official to be nominated by the Massachusetts Municipal Association; 2 representatives of
2556 environmental organizations, 1 of which shall be a land and water conservation organization; 2
2557 representatives of the alternative and renewable energy industry; 1 representative of the electric
2558 industry; and 2 representatives to be nominated by the AFL-CIO. The commission shall file a
2559 report with its finding, including any legislative and regulatory recommendations, with the
2560 clerks of the senate and house of representatives, the joint committee on telecommunications,
2561 utilities and energy and the senate and house committees on ways and means not later than 18
2562 months after the effective date of this act.

2563
2564 SECTION 90. The department of energy resources shall establish a pilot program to
2565 assist consumers with the purchase of energy efficient items for residential home modifications,
2566 hereinafter referred to as the HEAT Loan Program. For the purposes of this program, energy
2567 efficient items shall include home insulation, new window installation, advanced programmable
2568 thermostats, micro-combined heat and power systems, fuel efficient furnaces, boilers, oil, gas,
2569 propane, or electric heating systems; solar, domestic or fuel efficient hot water systems;
2570 materials for insulation or sealing of a duct, attic, basement, rim joint or wall; pipe insulation for

2571 heating systems; or other retail items for use in a residential dwelling that increase the energy
2572 efficiency of the dwelling. In establishing the program, the department shall develop a list of
2573 qualified state or federally chartered banking institutions or credit unions that do business in the
2574 commonwealth and that are governed by chapter 167 or 171 of the General Laws as
2575 participatory lending institutions. For the purposes of this section, a qualified lending institution
2576 shall include a lending institution that is certified by the executive office of energy and
2577 environmental affairs and which shall offer zero and low interest loans for the purpose of
2578 enhancing the energy efficiency of a residential dwelling. The program shall be funded from
2579 that portion of the mandatory charge that is authorized by section 19 of chapter 25 of the
2580 General Laws and allocated to residential customers. Not less than \$5 million shall be made
2581 available to assist participating financial institutions in offering these loan products by or
2582 through interest rate write downs or other credit enhancement features. Loans offered under the
2583 program shall be offered to residential homeowners in the commonwealth solely for the
2584 purposes stated in this section.

2585 The department shall make such loans available for purchases made on or after January
2586 1, 2009, but not later than December 31, 2009. The department shall establish the rules and
2587 guidelines to carry out the purposes of this section, including, but not limited to, establishing
2588 applicant criteria, application forms and procedures, energy efficiency product requirements and
2589 lending institution tracking and reporting requirements. The department shall submit a report
2590 detailing the rules and guidelines and the program results to the joint committee on
2591 telecommunications, utilities and energy not later than June 30, 2010.

2592
2593 SECTION 91. On or before January 1, 2011, the department of public utilities, in
2594 consultation with the department of energy resources, shall file a report on the effectiveness of
2595 the programs administered under section 19 of chapter 25 of the General Laws. The report shall
2596 include a financial accounting of all funds incurred by and administered under the section, and
2597 any recommendations deemed appropriate by the department of public utilities, including but
2598 not limited to, the increase, reduction or elimination of any mandatory charges authorized under
2599 said section 19 of said chapter 25 as they may relate to programs and plans under sections 21
2600 and 22 of said chapter 25; provided, however, that any recommendation for reduction or
2601 elimination should include a mechanism to ensure continued adequate funding for

2602 comprehensive low-income, demand side management and education programs. The report
2603 shall be filed with the clerks of the senate and house of representatives, the joint committee on
2604 telecommunications, utilities and energy, and the senate and house committees on ways and
2605 means.

2606

2607 SECTION 92. The department of public utilities shall hold a public hearing and issue a
2608 report, not later than July 1, 2009, relative to the maintenance and improvements of gate boxes
2609 of gas utilities located in the streets, roads or sidewalks. The report shall include, but not be
2610 limited to, an evaluation of the frequency of maintenance of gate boxes, the standards and
2611 practices employed by gas utilities to determine when maintenance of gate boxes is necessary,
2612 existing collaborations and communication between gas utilities and municipalities and state
2613 agencies when dealing with gate boxes on municipal and state roadways, and rate impacts and
2614 cost benefit analysis. The department shall report its findings, recommendations, any proposed
2615 penalties, and legislation, if any to the joint committee on telecommunications, utilities and
2616 energy, and the senate and house committees on ways and means.

2617 The department of public utilities shall hold a public hearing and issue a report, not later
2618 than July 1, 2009, relative to maintenance and repair standards for distribution systems of
2619 investor-owned electric and gas utilities. The department shall investigate and report on the
2620 establishment of performance or prescriptive standards or both that provide for inspection
2621 cycles for all overhead and underground facilities designed to minimize or prevent service
2622 interruptions and ensure high quality, safe and reliable service through the maintenance of
2623 detailed compliance reporting by distribution companies and annual review by the department.
2624 The department shall consider cost, local geography and weather, applicable codes, national
2625 electric industry practices, sound engineering judgment and experience, and appropriate
2626 sanctions, including rate deductions or monetary fines for non-compliance. The department
2627 shall report its findings, recommendations and proposed legislation, if any, to the joint
2628 committee on telecommunications, utilities and energy, and the senate and house committees on
2629 ways and means.

2630

2631 SECTION 93. Notwithstanding any general or special law to the contrary, the
2632 department of energy resources shall make available monies from amounts collected through

2633 Alternative Compliance Payments established and administered under 225 CMR 14.00 adopted
2634 under section 11F of chapter 25A of the General Laws, in the form of grants or other financial
2635 incentives for the following: (a) the green communities program established under section 10 of
2636 said chapter 25A; (b) state or community colleges in the commonwealth engaged in developing
2637 renewable energy generation projects, energy generation demonstration and educational
2638 programs, or applied engineering teaching tools pertaining to energy generation; (c)
2639 commonwealth-based companies engaged in developing flywheel energy storage technologies;
2640 and (d) funding capital investments in new and existing generation units for the use of
2641 department of environmental protection approved beneficial use determination paper derived
2642 fuels manufactured by Massachusetts corporations.

2643
2644 SECTION 94. The department of public utilities, in consultation with the department of
2645 energy resources, shall review and assess the effects of allowing electric and distribution
2646 companies to construct, own or operate solar generation facilities under subsection (f) of section
2647 1A of chapter 164 of the General Laws. This report shall be completed and filed with the joint
2648 committee on telecommunications, utilities and energy, and the house and senate committees on
2649 ways and means, and the clerks of the senate and house of representatives not later than June 30,
2650 2011. This report shall include any legislative and regulatory recommendations including but
2651 not limited to continuation, expansion or elimination of any provisions of this program under
2652 said subsection (f) of said section 1A of said chapter 164.

2653
2654 SECTION 95. The merger or consolidation of holding companies under section 96 of
2655 chapter 164 of the General Laws that has been filed and approved by the Federal Energy
2656 Regulatory Commission before the effective date of this act shall not be subject to the
2657 requirements of said section 96 of said chapter 164.

2658
2659 SECTION 96. The department of energy resources, in consultation with the division of
2660 capital asset management and maintenance, shall establish, not later than July 1, 2009, a
2661 methodology for use by agencies in assessing life-cycle costs that includes the requirements and
2662 assumptions set forth in subsections (a) and (b) of section 39D of chapter 7 of the General
2663 Laws.

2664

2665 SECTION 97. On or before December 31, 2009, the energy advisory council appointed
2666 under section 22 of chapter 25 of the General Laws shall undertake, using third party experts, a
2667 study which examines the energy efficiency and demand response programs in the
2668 commonwealth, including all public and private funding sources. The study shall include an
2669 audit of all existing energy efficiency and demand response programs to identify the costs and
2670 benefits associated with such programs. Such third party experts shall not have any contractual
2671 relationship with an electric or natural gas distribution company doing business in the
2672 commonwealth or any affiliate of such company.

2673

2674 SECTION 98. Not later than September 1, 2009, the department of public utilities shall
2675 establish terms and conditions under which a participating non-utility competitive supplier may
2676 be included in the program described in section 1D of chapter 164 of the General Laws.

2677

2678 SECTION 99. The Massachusetts Turnpike Authority shall develop a plan, in
2679 consultation with the executive office of transportation and the executive office of energy and
2680 environmental affairs, for the availability of alternative fuel at each fueling facility or service
2681 terminal on the Massachusetts Turnpike. The plan shall provide for the availability of
2682 alternative fuel at such locations not later than January 1, 2014. If the authority determines that
2683 such availability is not feasible for any reason, including the status of leases it has with its
2684 tenants on the Massachusetts Turnpike, it shall report those findings, together with the reasons
2685 therefor and the status of similar plans or projects of adjacent states, if any, to the senate and
2686 house committees on ways and means and the joint committee on transportation not later than
2687 January 31, 2009.

2688

2689 SECTION 100. (a) The commissioner of energy resources, in consultation with the
2690 secretary of administration and finance, the secretary of transportation, the general manager of
2691 the Massachusetts Bay Transportation Authority, a representative of the regional transit
2692 authorities, the secretary of economic affairs, the secretary of energy and environmental affairs
2693 and the operation services division, shall develop a statewide master plan for the advancement

2694 of hybrid and alternative fuel vehicles, as defined in section 1 of chapter 90 of the General
2695 Laws, and related technology.

2696 (b) The plan shall encompass a 10-year period, beginning in 2010, and shall be divisible
2697 in increments of not less than 5 years. The plan shall take into account the geographic diversity
2698 of the commonwealth, its present and projected demographics, present and projected
2699 transportation needs and infrastructure, and current, emerging and foreseeable alternative fuel
2700 and vehicle technologies, and may establish goals for areas such as the purchase and use of
2701 hybrid and alternative fuel vehicles, as well as the production, import action or distribution of
2702 alternative fuels.

2703 (c) The plan shall identify strategies and corresponding methods of achieving its
2704 identified goals together with necessary administration and legislative actions. The plan shall be
2705 filed with the clerks of the senate and house of representatives not later than 18 months after the
2706 effective date of this act.

2707

2708 SECTION 101. The operational services division, in consultation with the executive
2709 office of transportation, the secretary of administration and finance, the department of energy
2710 resources, the Massachusetts Bay Transportation Authority and regional transit authorities, shall
2711 study the feasibility of developing and implementing a system to facilitate the bulk purchase of
2712 alternative fuel vehicles by the commonwealth and its political subdivisions. The study shall
2713 include, but shall not be limited to, the potential cost savings to be derived from such a system,
2714 the cost of the system administration, appropriate purchasers to participate in the system and the
2715 probability of utilization of the system by such purchasers.

2716 The operational services division shall file its findings of the study, and its
2717 recommendations, if any, together with drafts of legislation necessary to carry such
2718 recommendations into effect, with the clerks of the senate and house of representatives not later
2719 than 1 year after the effective date of this act.

2720

2721 SECTION 102. The department of public utilities, in consultation with the department
2722 of energy resources, shall hold a public hearing to examine the impacts on the competitive retail
2723 electricity marketplace through the existing electric utility default service adjustment
2724 mechanism. This public hearing shall include an examination of all costs that are recovered

2725 from ratepayers through this charge and recommended changes to insure that appropriate price
2726 signals are sent to the marketplace in order for customers to make informed decisions about
2727 their energy consumption based on price. The department of public utilities shall hold the public
2728 hearing not later than May 1, 2009. The department of public utilities shall file a report of its
2729 findings, including any legislative or regulatory recommendations, with the joint committee on
2730 telecommunications, utilities and energy and with the clerks of the senate and the house of
2731 representatives not later than June 1, 2009.

2732

2733 SECTION 103. Each electric distribution company under section 1D of chapter 164 of
2734 the General Laws shall file a compliance plan, complete with an effective date, indicating its
2735 compliance with the last paragraph of said section 1D of said chapter 164 within 3 months after
2736 the effective date of this act.

2737

2738 SECTION 104. The first report required to be filed by the division of green
2739 communities under subsection (f) of section 10 of chapter 25A shall be filed with the clerks of
2740 the senate and the house of representatives, the joint communications on telecommunications,
2741 utilities, and energy, and the senate and the house committees on ways and means not later than
2742 April 1, 2010.

2743

2744 SECTION 105. (a) For the purposes of this section, the following words shall, unless
2745 the context clearly requires otherwise, have the following meanings:-

2746 "Department", the department of energy resources.

2747 "Generator", the person that owns, directly or indirectly, as determined by the
2748 department, the output from the renewable energy generating source that is located in the ISO-
2749 NE control area, as defined in section 1 of chapter 164 of the General Laws or in a control area
2750 adjacent to the ISO-NE control area.

2751 "Person", an individual, corporation, limited liability company, general or limited
2752 partnership, trust, association or other entity, or an agent of such person.

2753 (b) A renewable energy generating source, as defined in subsection (b) of section 11F of
2754 chapter 25A of the General Laws, that is physically located in or relocated to a control area
2755 adjacent to the ISO-NE control area may qualify as an eligible renewable energy generating

2756 source under said section 11F; provided, however, that the renewable energy generated by such
2757 renewable energy generating source is delivered into and used by consumers within the ISO-NE
2758 control area.

2759 (c) The delivery of renewable energy into the ISO-NE control area, as described in
2760 subsection (b), shall not qualify under the renewable portfolio standard, notwithstanding such
2761 delivery into the ISO-NE control area, unless the generator of such renewable energy: (1)
2762 initiates the import transaction pursuant to a spot market sale into the ISO-NE administered
2763 markets or under a bilateral sales contract with a purchaser of the renewable energy located in
2764 the ISO-NE control area by properly completing a North American Electric Reliability
2765 Corporation tag from the generator in the adjacent control area to either a node or zone in the
2766 ISO-NE control area; (2) complies with all ISO-NE rules and regulations required to schedule
2767 and deliver the renewable energy generating source's energy into the ISO-NE control area; and
2768 (3) commits the renewable generating source as a committed capacity resource for the
2769 applicable annual period.

2770 (d) During any period in which the generator is delivering renewable energy from the
2771 renewable energy generating source into the ISO-NE control area, and notwithstanding
2772 compliance with subsection (c), the renewable energy generated by the renewable energy
2773 generating source that is eligible for the renewable portfolio standard shall be limited to the
2774 lesser of the following: (1) the renewable energy actually generated by the renewable energy
2775 generating source; or (2) the renewable energy actually scheduled and delivered into the ISO-
2776 NE control area by the generator.

2777 (e) The renewable portfolio standard credit applicable to the eligible renewable energy
2778 as determined under subsection (d) shall be reduced by any exports of energy from the ISO-NE
2779 control area made by the person seeking renewable portfolio credit for such renewable energy
2780 or any affiliate of such person, or any other person under contract with such person to export
2781 energy from the ISO-NE control area and deliver such energy directly or indirectly to such
2782 person.

2783 (f) The department may adopt regulations and requirements to implement this section.

2784 (g) The department shall assess the feasibility of implementing subsections (c) and (e)
2785 and report its findings along with proposed regulations for implementing these subsections in
2786 accordance with section 12 of chapter 25A, on or before November 1, 2008.

2787 (h) Subsections (c) and (e) shall take effect, subject to the provisions of section 12 of
2788 chapter 25A, after the report required under subsection (g) has been filed if the department has
2789 determined that it is feasible to implement these subsections.

2790
2791 SECTION 106. The department of housing and community development shall make
2792 recommendations regarding what supplemental state funds, if any, shall be expended for the
2793 federal Low Income Home Energy Assistance Program, under 42 U.S.C. § 8621 et seq., for the
2794 purpose of assisting low-income elders, working families and other households with the
2795 purchase of heating oil, propane, natural gas, electricity and other primary or secondary heating
2796 sources; provided, however, that any recommended expenditures in addition to any federal
2797 funding shall be made in accordance with the state plan submitted by the department of housing
2798 and community development in accordance with the federal program. The recommendations
2799 shall include recommended funding levels and funding sources. The department of housing and
2800 community development shall submit its first report on its recommendations to the joint
2801 committee on telecommunications, utilities and energy not later than October 1, 2009, and shall
2802 file reports annually not later than October 1.

2803
2804 SECTION 107. The department of energy resources shall conduct a study of the fiscal
2805 impact, viability, statutory and regulatory barriers and long-term results of establishing and
2806 operating municipal-owned electric utilities in the commonwealth. The study shall: (a) address
2807 any existing inequities or other barriers preventing the establishment of municipal-owned
2808 electric utilities in current statutes or regulations; (b) provide a financial overview of the
2809 purchase of an investor owned utility's assets by a municipality; and (c) include a review of the
2810 impact on: reliability; investor owned utility operations; municipal taxes; rates for both
2811 distribution company customers and municipal customers; lost revenues for investor owned
2812 utilities; effect on energy efficiency programs; the impact on capital borrowing; and impact on
2813 low-income customers.

2814 There shall be a commission that shall advise the commissioner of energy resources with
2815 respect to this study. The commission shall be comprised of the commissioner or a designee
2816 who shall serve as chair, and 11 other members as follows: 4 of whom shall be appointed by the
2817 executive director of the Massachusetts Municipal Association, 3 of whom shall be from

2818 municipalities that are interested in establishing a municipal electric utility; 1 of whom shall be
2819 appointed by the attorney general and who shall be from the office of the attorney general; 1 of
2820 whom shall be appointed by the commissioner of the department of public utilities and who
2821 shall be from the department of public utilities; 1 of whom shall be a municipal finance expert
2822 recommended by the Massachusetts Taxpayers Foundation; 1 of whom shall be a representative
2823 of the Utility Workers of America; and 2 of whom shall be representatives to be appointed on a
2824 voluntary basis by the commissioner, 1 of whom shall be an executive from an investor-owned
2825 utility and the other of whom shall be an executive of an existing municipal electric utility. The
2826 department of energy resources shall submit the study to the joint committee on
2827 telecommunications, utilities and energy not later than January 1, 2009.

2828

2829 SECTION 108. (a) On or before October 1, 2009, the department of energy resources
2830 shall collaborate with the University of Massachusetts at Boston to establish an educational
2831 outreach pilot program designed for communities to further the goals set forth in this section.
2832 The pilot program shall include educational programs provided at the University of
2833 Massachusetts at Boston, community colleges and community centers. The pilot program shall
2834 include short courses designed for presentation at convenient times for communities, including
2835 evenings and weekends.

2836 (b) The content of such courses shall include, but not be limited to, the following:

2837 (1) the need for broad public-private collaboration to achieve the acceleration of
2838 customer-orientated energy efficiency and conservation programs;

2839 (2) a short-term concentration on retrofitting existing energy control systems to achieve
2840 significant energy and financial savings as well recent advancements in this technology;

2841 (3) the basic principles of personal financial accounting to demonstrate that capital
2842 investment should achieve the savings identified in clause (2);

2843 (4) the demonstration of the major cost savings of instituting energy efficiency and
2844 conservation programs, including demand side management planning, as compared with the
2845 costs of purchasing energy;

2846 (5) existing programs available through public utilities, municipal lighting departments,
2847 municipal aggregators and other entities to assist customers with their energy reduction,
2848 including any prospective expansion thereof;

2849 (6) the benefits to all energy users resulting from the reduction by individual users of
2850 their energy consumption, which reduces the burden on public utilities to procure increasing
2851 amounts of energy overall and at moments of peak usage; and

2852 (7) any additional benefits as energy usage becomes more sustainable in the
2853 commonwealth.

2854 (c) In preparing and revising the syllabus for such courses, the University of
2855 Massachusetts at Boston, shall periodically consult with the department of energy resources,
2856 other governmental entities and public utilities to receive feedback about the program. Public
2857 utilities may provide instructors for such courses.

2858 (d) The department of energy resources shall issue a report detailing the progress of the
2859 pilot program to the clerks of the senate and the house representatives, the joint committee on
2860 telecommunications, utilities and energy, and the senate and house committee on ways and
2861 means, on or before October 1, 2010.

2862

2863 SECTION 109. Notwithstanding any general or special law to the contrary, the
2864 department of public utilities shall open an investigation and study relative to off-the-record *ex-*
2865 *parte* communications in any contested, on-the-record proceeding before the department. The
2866 department shall report to the general court the results of its investigation and study and its
2867 recommendations, if any, together with drafts of legislation necessary to carry its
2868 recommendations into effect, by filing the same with the clerks of the senate and the house of
2869 representatives who shall forward the same to the chairs of the joint committee on
2870 telecommunications, utilities and energy on or before April 1, 2009.

2871

2872 SECTION 110. Notwithstanding subsection (c) of section 19 of chapter 25 of the
2873 General Laws, for 3 years after the expiration of each electric or gas company efficiency plan or
2874 agreement in place as of January 1, 2008, the amount and percentage allocated to the low-
2875 income residential subclass for the electric or gas company shall not be reduced to less than the
2876 amount provided under law, guidelines and agreements in force as of January 1, 2009.

2877

2878 SECTION 111. The first plans required under section 21 of chapter 25 of the General
2879 Laws shall be prepared and submitted to the energy efficiency advisory council on or before

2880 April 30, 2009. The electric and natural gas distribution companies and municipal aggregators
2881 shall submit these plans, together with the energy efficiency advisory council's approval or
2882 comments and a statement of any unresolved issues, to the department of public utilities on or
2883 before October 31, 2009.

2884

2885 SECTION 112. Not later than March 1, 2009, the department of environmental
2886 protection, in consultation with the department of energy resources, shall adopt regulations for
2887 the implementation of section 22 of chapter 21A of the General Laws.

2888

2889 SECTION 113. Clause (i) of paragraph (1) of subsection (c) of section 22 of chapter
2890 21A of the General Laws shall not impact any enforceable multiyear agreements effective
2891 during the period from January 1, 2007, through the implementation of the Regional
2892 Greenhouse Gas Initiative, as defined in said section 22 of said chapter 21A.

2893

2894 SECTION 114. Said clause (i) of said paragraph (1) of said subsection (c) of said
2895 section 22 of said chapter 21A shall be effective for tax years beginning on or after January 1,
2896 2009 and shall expire on December 31, 2011.

2897

2898 SECTION 115. Notwithstanding paragraph (2) of subsection (c) of section 22 of
2899 chapter 21A of the General Laws, the department of environmental protection may withhold
2900 from auction such allowances of vintage years 2009 to 2012, inclusive, as may be necessary to
2901 provide a transition to the Regional Greenhouse Gas Initiative from the program established
2902 under 310 CMR 7.29.

2903

2904 SECTION 116. (a) It is hereby established that the commonwealth's renewable and
2905 alternative energy and energy efficiency goals are as follows:-

2906 (1) meet at least 25 per cent of the commonwealth's electric load, including both
2907 capacity and energy, by the year 2020 with demand side resources including: energy efficiency,
2908 load management, demand response and generation that is located behind a customer's meter
2909 including a combined heat and power system with an annual efficiency of 60 per cent or greater
2910 with the goal of 80 per cent annual efficiency for combined heat and power systems by 2020;

2911 (2) meet at least 20 per cent of the commonwealth's electric load by the year 2020
2912 through new, renewable and alternative energy generation;

2913 (3) reduce the use of fossil fuel in buildings by 10 per cent from 2007 levels by the year
2914 2020 through the increased efficiency of both equipment and the building envelope;

2915 (4) develop a plan to reduce total energy consumption in the commonwealth by at least
2916 10 per cent by 2017 through the development and implementation of the green communities
2917 program, established by section 10 of chapter 25A of the General Laws, that utilizes renewable
2918 energy, demand reduction, conservation and energy efficiency. Not later than September 1 of
2919 each year, the secretary of energy and environmental affairs shall establish an annual reduction
2920 target for the commonwealth for the following calendar year.

2921 (b) The secretary of energy and environmental affairs shall prepare, with the assistance
2922 of the energy advisory board established under subsection (c), a 5-year plan for meeting the
2923 renewable and alternative energy and energy efficiency goals of the commonwealth. The plan
2924 shall include strategies to meet each of the goals and shall also address the following topics:

2925 (1) reduction of energy use in state buildings;

2926 (2) reduction of energy use in municipal buildings;

2927 (3) equitable distribution of program benefits to all customers and particularly low
2928 income customers to address the affordability and adverse impacts on low-income households
2929 of energy costs and demand mitigation strategies, and mitigation of such adverse impacts, such
2930 as by compensating adjustments to the low-income rate discount;

2931 (4) the use of investment tax credits and tax policy generally to encourage investment in
2932 energy efficiency and renewable and alternative technologies;

2933 (5) increased generation and use of renewable and alternative energy;

2934 (6) the coordination and integration of programs within the commonwealth and with
2935 regional efforts carried out by other New England states; and

2936 (7) progress towards improving the efficiency of buildings and mechanical systems on
2937 an all-fuels basis including, electric, gas and oil.

2938 (c) The secretary of energy and environmental affairs shall appoint an advisory board to
2939 assist in the development and review of the plan. The board shall meet at the call of the
2940 secretary. The secretary shall submit the plan to the speaker of the house of representatives, the

2941 president of the senate, the senate and house committees on ways and means, and the joint
2942 committee on telecommunications, utilities and energy.

2943 (d) The 5-year plan shall designate the agency responsible for implementation of each
2944 strategy and shall include timelines, performance standards, specific regulatory or legislative
2945 changes, evaluation procedures and additional budget requirements.

2946

2947 SECTION 117. Section 21 of chapter 21A of the General Laws shall take effect on July
2948 1, 2008.

2949

2950 SECTION 118. Subsections (c), (d) and (e) of section 11F of chapter 25A of the
2951 General Laws shall take effect on January 1, 2009

2952

2953 SECTION 119. Subsection (a) of section 11F1/2 of chapter 25A of the General Laws
2954 shall take effect on January 1, 2009.

2955

2956 SECTION 120. Subsection (o) of chapter 143 of the General Laws shall take effect 6
2957 months after the effective date of this act.

2958

2959 SECTION 121. Section 5 shall take effect 1 year after the effective date of this act.

2960

2961 SECTION 122. Section 59 shall take effect on June 30, 2012.

2962

2963 SECTION 123. Section 53 shall take effect 3 years after the effective date of this act

2964

2965 SECTION 124. Section 80 shall take effect on April 10, 2007.