

(Senate Proposed Re-draft – December 21, 2007)

**An Act to Promote Efficiency-First Energy Procurement, Renewable and Alternative Energy Generation, and Green Communities in the Commonwealth**

SECTION 1. Chapter 7 of the General Laws is hereby amended by inserting after section 9A the following section:-

Section 9B. If a motor vehicle owned and operated by the commonwealth is being removed from service, it shall only be replaced with a vehicle that has above-average fuel efficiency for a new vehicle within its size class as determined by the federal government. This section shall not apply when the purchase of an above-average fuel efficiency vehicle within its size class as determined by the federal government would result in an inability of the new vehicle to perform its intended duties.

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

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

(i) The state agency shall utilize alternate technologies when the life-cycle cost analysis conducted under subsection (b) shows that such systems are economically feasible.

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

(iii) The division of capital asset management and maintenance or the state agency shall attempt, in the design, construction, equipping and operation of such facilities, to coordinate these efforts with the division of energy resources in order to maximize reliance on, and the benefits of, renewable energy research and investment activities promoted by this act;

(b) The division of capital asset management and maintenance or the state agency initiating the construction or renovation of a facility subject to the requirements of subsection (a) shall conduct a life-cycle cost analysis of any such facility's proposed design that evaluates the short-term and long-term costs and the technical feasibility of using alternate technologies to provide lighting, heat, water heating, air conditioning, refrigeration, gas or electricity. In calculating life-cycle costs, a state agency shall include the value of avoiding carbon emissions, creating renewable energy certificates and other environmental benefits created from the utilization of alternate technologies, as applicable. This value shall be equal to the bid price of the published market value

of any such benefit and shall be assumed to increase at a rate of 5 per cent per year above the estimated rate of inflation for any year in which there are no published values. To calculate life-cycle costs, a state agency shall use a discount rate equal to the rate that the commonwealth's tax-exempt long-term bonds are yielding at the time of said calculation and shall assume that the cost of fossil fuels and electricity will increase at the rate of 3 per cent per year above the estimated rate of inflation.

(c) Notwithstanding section 28 of chapter 6C, the division of capital asset management and maintenance may procure energy management services jointly with a state agency or a building authority that is procuring energy or related services. The provisions of said section 28 shall apply to the extent feasible as determined by the commissioner of energy resources.

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

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

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

SECTION 3. Chapter 12 of the General Laws is hereby amended by striking out section 11E, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

Section 11E. (a) The attorney general may participate, appear and intervene in any regulatory or judicial proceedings, federal or state, in which the interests of ratepayers in the Commonwealth may be involved, including, but not limited to, a matter affecting utility services rendered or involving the rates, charges, prices, tariffs or practices of an electric, gas, generator, transmission, telephone, telegraph, voice over internet protocol, or cable or satellite television company doing business in the commonwealth. The attorney general shall have standing to intervene in all proceedings before the department of public utilities and department of telecommunications and cable.

For the purpose of such participation, appearance or intervention, the attorney general may expend such funds as may be appropriated therefor; provided, however, that such expenditures shall not exceed annually the amount assessed against such electric, gas, telephone and telegraph company under section 9A of chapter 6A notwithstanding the provisions of subsection (b) of this section.

The attorney general shall not expend any of such funds if the expenditure shall conflict with his duties under section 3.

(b) In the performance of his duties under this section, the attorney general may retain an expert or a consultant to assist in proceedings before the department of public utilities or the department of telecommunications and cable. If the attorney general determines that the services of an expert or a consultant are necessary or desirable in a proceeding, he shall file notice in the proceeding that includes the type of expert or consultant sought and the anticipated cost. Upon the filing of such notice, the department before which the proceeding is commencing shall allow full parties to the proceeding the opportunity to comment regarding the necessity or desirability of such services. Absent a showing that the costs proposed are unnecessary for the attorney general to represent ratepayer interests in the proceeding or that such costs are not reasonable or proper, the use of the expert or consultant shall be approved. Costs for an expert or a consultant shall not exceed \$150,000 per proceeding unless approved by the department based upon exigent circumstances including complexity of the proceeding. All reasonable and proper expenses, as defined in this section, shall be borne by the affected company in the proceeding and shall be paid by such company at such times and in such manner as the attorney general directs. All reasonable and proper costs and expenses, as defined in this section, shall be recognized by the departments for all purposes as proper business expenses of the affected company, subject to recovery through rates.

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

SECTION 4. Chapter 13 of the General Laws is hereby amended by adding the following section:-

Section 97A. (a) The board of registration of home inspectors, in consultation with the state board of building regulations and standards, the division of energy resources and the energy efficiency advisory council, shall develop requirements and promulgate regulations establishing a home energy scoring program to require the scoring by licensed personnel at the time of sale of single-family residential dwellings and multiple-family residential dwellings with less than 5 dwelling units. The board of registration of home inspectors shall consider other state home scoring programs and any relevant federal programs when developing requirements and promulgating regulations.

(b) The board may include in its regulations any provisions requiring sellers of such dwellings to provide potential buyers with copies of utility and, if applicable, oil heating bills for the dwelling for charges incurred during the prior calendar year; and, if the seller has not retained such bills, provisions requiring utilities and heating oil distributors to provide potential sellers billing information for the dwelling for charges incurred during the prior calendar year.

(c) The regulations shall include provisions for training and licensure; standards of professional and ethical conduct for home energy scoring personnel; and the establishment of reasonable fees for the services of such personnel, to be paid by the sellers or purchasers of dwellings.

(d) Before implementation of any regulations established under this section, the board of registration of home inspectors shall report to the senate and house committees on ways and means and the joint committees on consumer protection and professional licensure and telecommunications, utilities and energy on the anticipated added costs, if any, to sellers or purchasers of dwellings relating to the implementation of this section. The report shall include any recommendations deemed appropriate by the board, including, but not limited to, any added costs being absorbed by any existing energy efficiency program funding sources or mechanisms.

SECTION 5. Chapter 21A of the General Laws is hereby amended by inserting after section 18A the following section:-

Section 18B. (a) The secretary, in conjunction with the Massachusetts Technology Park Corporation, shall create a green communities program for communities that wish to implement a comprehensive program to reduce greenhouse gas emissions through the promotion of efficiency, renewable energy, transportation and other strategies. The standards for being designated a green community shall be developed and administered by the secretary. Said standards shall include the creation and submission of a plan to leverage state, federal, local and voluntary efforts to achieve measurable and defined environmental goals based on a checklist of potential strategies.

(b) The Secretary shall direct program administrators of the energy efficiency funds and the renewable energy trust fund to assist green communities in achieving their community based goals and objectives; provided, however, that funds shall be allocated, and low-income programs shall be implemented, under subsection (c) of section 19 of chapter 25. Such assistance may include: (i) developing and delivering targeted services to these communities; (ii) increasing the proportional share of resources available to a green community based on the amount of leveraged funds that the community proposes to incorporate and deliver as part of its plan and the availability of overall program funds; and (iii) making reasonable efforts to create customized strategies in support of the community's plan. Said assistance to be provided to green communities by administrators of energy efficiency funds and the renewable energy trust fund shall not result in the expenditure, award, encumbrance or application of more than 20 per cent of the funds expended, awarded, encumbered or otherwise applied by each administrator in any single calendar year.

(c) The secretary shall expedite state funding for business development and transportation development and siting approvals for projects associated with an approved green communities plan.

(d) The secretary shall establish a program to support any community that institutes a project to inventory and reduce its environmental footprint. This program shall include directed support from the energy efficiency and renewable energy program administrators to provide a checklist on how to conduct that environmental footprint analysis and provide input into monitoring and calculating progress towards reducing that footprint.

(e) A green community may create and enforce building codes on both new and existing facilities within its jurisdiction, which will assist green communities in achieving their community

based goals and objectives; provided, however, that a green community shall ensure that loans are available to the owners of said facilities to perform projects required by such building codes and that the cost of installing and operating such projects is lower than either, in the case of existing facilities where no renovation is proposed, the cost of doing nothing, or, in the case of existing facilities where a renovation is proposed or of new facilities, installing and operating the energy or energy-using technology that would otherwise be installed, as determined by a life-cycle cost analysis.

A green community may issue from time to time bonds or notes in order to finance all or a portion of the costs of such projects authorized under this subsection. Notwithstanding any provision of chapter 44 to the contrary, the maturities of any such bonds issued by a municipality hereunder either shall be arranged so that for each issue the annual combined payments of principal and interest payable in each year, commencing with the first year in which a principal payment is required, shall be as nearly equal as practical in the opinion of the municipal treasurer, or shall be arranged in accordance with a schedule providing for a more rapid amortization of principal. The first payment of principal of each issue of bonds or of any temporary notes issued in anticipation of the bonds shall be not later than 5 years from the estimated date of commencement of regular operation of such projects financed thereby, as determined by the municipal treasurer and the last payment of principal of the bonds shall be not later than 25 years from the date of the bonds. Indebtedness incurred under this act shall not be included in determining the limit of indebtedness of the municipality under section 10 of said chapter 44 but, except as otherwise provided herein, shall be subject to the provisions of said chapter 44. Green communities are hereby authorized to place tax liens on facilities within their jurisdiction in order to facilitate loans for investments in such facilities which will assist green communities in achieving their community based goals and objectives.

A green community may establish an enterprise fund under section 53F1/2 of chapter 44 for the receipt of all applicable revenues from the owners of such projects borrowing funds from such green communities. Such receipts are to be used to pay costs of administering loans, and to pay the principals and interest on any bonds or notes issued therefore.

SECTION 6. Said chapter 21A is hereby further amended by adding the following section:-

Section 21. The secretary, in conjunction with the secretary of administration and finance, may design and implement a competitive bidding process for the competitive procurement of electric generation on behalf of any agency, executive office, department, board, commission, bureau, division, or authority of the commonwealth procuring electricity from a local distribution company via basic service under subsection (e) of section 1B of chapter 164, as of July 1, 2008.

SECTION 7. Chapter 25 of the General Laws is hereby amended by inserting after section 5D the following section:-

Section 5E. The department shall periodically audit all companies subject to its jurisdiction, including, but not limited to, review of the following documents: (i) all financial statements, the balance sheet, the income statement, the statement of cash flows, the statement of retained earnings, the notes to the financial statements and the information in the annual return to the department; (ii) documents concerning the reconciling mechanisms related to rates, prices or charges, merger, acquisition or consolidation related costs and savings 3 years following the merger, acquisition or

consolidation; and (iii) documents concerning service quality measure statistics and the service quality performance at least every 3 years or whenever service quality penalties equal or exceed 50 per cent of the maximum. Upon written complaint of the attorney general requesting an independent audit of any company subject to the department's jurisdiction, the department shall commence a proceeding within 30 days of receipt of the complaint for the purpose of ordering the requested audit in a reasonable time. The results of any audit so ordered shall be filed promptly with the department and each audit shall be paid for by the company that is the subject of the audit.

SECTION 8. Said chapter 25 is hereby further amended by inserting after section 18 the following section:-

Section 18A. The commission may make an assessment against each steam distribution company under the jurisdictional control of the department of public utilities. Each steam distribution company shall annually report by March 31 its intrastate operating revenues for the previous calendar year to said department. The assessments shall be made at a rate not exceeding 0.2 per cent of such intrastate operating revenues, as shall be determined and certified annually by the commission as sufficient to reimburse the commonwealth for funds appropriated by the general court for the operation and general administration of the department and for the cost of fringe benefits as established by the commissioner of administration under section 5D of chapter 29, including group life and health insurance, retirement benefits, paid vacations, holidays and sick leave.

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

SECTION 9. Said chapter 25 is hereby further amended by striking out section 19, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

Section 19. (a) The department shall require a mandatory charge of 2.5 mills per kilowatt-hour for all consumers, except those served by a municipal lighting plant, to fund energy efficiency programs including, but not limited to, demand side management programs. The programs shall be administered by the electric distribution companies and by municipal aggregators with energy plans certified by the department under subsection (b) of chapter 164. In addition to the aforementioned mandatory charge, such programs shall also be funded by other funding as approved by the department after consideration of (i) the effect of any rate increases on residential and commercial consumers, (ii) the availability of other funds, private or public, utility administered or otherwise, that may be available for energy efficiency or demand resources, and (iii) whether past programs have lowered the cost of electricity to residential and commercial consumers. In authorizing such programs, the department shall ensure that they are delivered in a cost-effective manner capturing all available efficiency opportunities and utilizing competitive procurement processes to the fullest extent practicable.

(b) The department may approve and fund gas energy efficiency programs proposed by gas distribution companies including, but not limited to, demand side management programs. Energy efficiency activities eligible for funding under this section shall include geothermal heating and cooling projects provided that the number of wells for any such project exceeds 375 and that the geothermal heating and cooling systems are owned and utilized by not-for-profit institutions in the commonwealth. Funding may be supplemented by funds authorized by section 21. The programs shall be administered by the gas distribution companies. In authorizing such programs, the department shall ensure that they are delivered in a cost-effective manner capturing all available efficiency opportunities and utilizing competitive procurement processes to the fullest extent practicable.

(c) Electric and gas energy efficiency program funds shall be allocated to customer classes, including the low-income residential sub-class, in proportion to their contributions to those funds; provided, however, that at least 10 per cent of the amount expended for electric energy efficiency programs and at least 20 per cent of the amount expended for gas energy efficiency programs shall be spent on comprehensive low-income residential demand-side management and education programs; and provided further that for a period of 3 years subsequent to the expiration of each electric or gas company efficiency plan or agreement in place as of January 1, 2008, the amount and percentage allocated to the low-income residential sub-class for the electric or gas company shall not be reduced from that provided under law, guidelines and agreements in force as of January 1, 2008. The low-income residential demand-side management and education programs shall be implemented through the low-income weatherization and fuel assistance program network and shall be coordinated with all electric and gas distribution companies in the commonwealth with the objective of standardizing implementation. Such programs shall be screened only through cost-effectiveness testing which compares the value of program benefits to society to program costs to ensure that programs are designed to obtain energy savings and system benefits whose value is greater than the costs of the programs.

SECTION 10. Section 20 of said chapter 25, as so appearing, is hereby amended by inserting after the first sentence the following sentence:- Notwithstanding any general or special law to the contrary, (i) a municipal lighting plant which does not supply generation service outside its service territory or does not open its service territory to competition may elect to assess and remit a mandatory charge per kilowatt-hour upon its electricity consumers on the same terms and conditions as apply to the charge imposed on consumers residing in competitive distribution service territories under this paragraph and subsection (c) of this section; provided, however, that such an election by a municipal lighting plant shall be irrevocable and shall not be deemed to be supplying generation service outside its service territory or opening its service territory to competition at the retail level for the purposes of the first sentence of this paragraph; and (ii) in administering the Massachusetts Renewable Energy Trust Fund the Massachusetts Technology Park Corporation, doing business as the Massachusetts Technology Collaborative, shall not make any grant or loan or provide any subsidy from said trust fund to any municipal lighting plant or a consumer residing in the distribution service territory of such municipal lighting plant unless: (A) a mandatory charge per kilowatt-hour is assessed against all consumers residing in the distribution service territory and remitted to the collaborative under the preceding sentence or clause (i); (B) the grant or subsidy is made under paragraph (2) of subsection (f) of section 4E of chapter 40J; or (C) the board of directors of the collaborative, as a condition precedent to any such grant, loan or subsidy, shall have determined and incorporated into the minutes of its proceedings findings that: (1) any such grant, loan or subsidy is intended for the principal purpose of generating public benefits for those

consumers who reside in distribution service territories in which the mandatory charge is so imposed and remitted and will generate only incidental private benefits to the recipient or others residing in a distribution service territory in which the mandatory charge is not so imposed and remitted; and (2) the facts and circumstances associated with the recipient or the residence of the recipient provide unique or extraordinary opportunities to advance the public purposes of the trust fund over those opportunities available through grants or subsidies made to recipients residing in distribution service territories in which such a mandatory charge is assessed and remitted.

SECTION 11. Said chapter 25 is hereby further amended by adding the following 2 sections:-

Section 21. (a) To mitigate capacity and energy costs for all customers, the department shall ensure that, subject to subsection (c) of section 19, the commonwealth's electric and natural gas resource needs shall first be met through all available energy efficiency and demand reduction resources that are cost effective and less expensive than supply. The cost of supply shall be determined by the department with consideration of the average cost of generation to all customer classes over the previous 24 months.

(b)(1) On or before July 31, 2008, and every 3 years thereafter, the electric distribution utilities and municipal aggregators with certified efficiency plans shall jointly prepare an electric efficiency investment plan and the natural gas distribution utilities shall jointly prepare a natural gas efficiency investment plan. Each plan shall provide for the acquisition of all available energy efficiency and demand reduction resources that are cost effective and less expensive than supply and shall be prepared in coordination with the energy efficiency advisory council, established by section 22. Each plan shall provide for the acquisition, with the lowest reasonable customer contribution, of all of the cost effective energy efficiency and demand reduction resources that are available from municipalities and other governmental bodies.

(2) A plan shall include: (a) an assessment of the estimated lifetime cost, reliability and magnitude of all available energy efficiency and demand reduction resources that are cost effective and less expensive than supply; (b) the amount of demand resources, including efficiency, conservation, demand response and load management, that are proposed to be acquired under the plan and the basis for this determination; (c) the estimated energy cost savings that the acquisition of such resources will provide to electricity and natural gas consumers, including, but not limited to, reductions in capacity and energy costs and increases in rate stability and affordability for low-income customers; (d) a description of programs, which may include, but which shall not be limited to: (i) efficiency and load management programs; (ii) demand response programs; (iii) programs for research, development and commercialization of products or processes which are more energy-efficient than those generally available; (iv) programs for development of markets for such products and processes, including recommendations for new appliance and product efficiency standards; (v) programs providing support for energy use assessment, real-time monitoring systems, engineering studies and services related to new construction or major building renovation, including integration of such assessments, systems, studies and services with building energy codes programs and processes, or those regarding the development of high performance or sustainable buildings that exceed code; (vi) programs for the design, manufacture, commercialization and purchase of energy-efficient appliances and heating, air conditioning and lighting devices; (vii) program planning and evaluation; (viii) programs providing commercial, industrial and institutional customers with greater flexibility and control over demand side investments funded by the programs at their facilities; and



(ix) programs for public education regarding energy efficiency and demand management; provided, however, that not more than 1 per cent of the fund shall be expended for items (iii) and (iv) collectively, without authorization from the advisory council; (e) a proposed mechanism which provides performance incentives to the companies based on their success in meeting or exceeding the goals in the plan; (f) the budget that is needed to support the programs; (g) a fully reconciling funding mechanism which may include, but which shall not be limited to, the charge authorized by section 19; and (h) the estimated amount of reduction in peak load that will be reduced from each option and any estimated economic benefits for such projects including job retention, job growth or economic development.

(3) A plan shall include data showing the percentage of all monies collected that will be used for direct consumer benefit, such as incentives and technical assistance to carry out the provisions of the plan. With the approval of the advisory council, the plan may also include a mechanism to prioritize to projects that have substantial benefits in reducing peak load, reducing the energy consumption or costs of municipalities or other governmental bodies, or have economic development, job creation or job retention benefits.

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

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

(iii) A plan shall be submitted for approval and comment by the energy efficiency advisory council on or before July 31, 2008, and every 3 years thereafter. The electric and natural gas distribution utilities and municipal aggregators shall provide any additional information requested by the council that is relevant to the consideration of the plan. The council shall review the plan and any additional information and shall submit its approval or comments to the electric and natural gas distribution utilities and municipal aggregators not later than 3 months after submission of the plan. The electric and natural gas distribution utilities and municipal aggregators may make any changes or revisions to reflect the input of the council.

(c)(1) The electric and natural gas distribution utilities and municipal aggregators shall submit their respective plans, together with the council's approval or comments and a statement of any unresolved issues, to the department on or before October 31, 2008, and every 3 years thereafter. The department shall consider the plans and shall provide an opportunity for interested parties to be heard in an adjudicatory proceeding.

(2) Not later than 90 days after submission of a plan, the department shall issue a decision on the plan which ensures that the electric and natural gas distribution utilities have identified and shall capture all energy efficiency and demand reduction resources that are cost effective and less expensive than supply and shall approve, or modify and approve, the plan accordingly. In the case of municipal aggregators, the department shall approve a fully reconciling funding mechanism for the approved plan that requires coordination between the distribution utility and municipal aggregator to ensure that program costs are collected, allocated and distributed in a cost effective,

fair and equitable manner.

(d) An electric or natural gas distribution utility or municipal aggregator that fails to achieve the program savings goals described in this section shall make a payment equal to the product of the assessment rate of \$0.05/kWh or \$1/therm times the shortfall of kWhs saved or therms saved, as applicable, to Massachusetts Technology Park Corporation within 60 days after the end of the year in which the shortfall occurred. The assessment rate shall be adjusted each year after 2008 and shall be equal to the previous year's rates adjusted up or down according to the previous year's Consumer Price Index. The division of energy resources shall oversee the use of said funds by the Massachusetts Technology Park Corporation so as to maximize the amount of energy efficiency achieved.

Section 22. (a) The department shall appoint and convene an energy efficiency advisory council which shall consist of not more than 12 members, including at least 1 person representing each of the following: (i) residential consumers: (ii) the low-income weatherization and fuel assistance program network, (iii) the environmental community, (iv) businesses, including large C&I end-users, (v) the manufacturing industry, (vi) energy efficiency experts, (vii) organized labor, (viii) the department of environmental protection, (ix) the attorney general, (x) the executive office of housing and economic development and (xi) the division of energy resources. Interested parties shall apply to the department for designation as members. Members shall serve for terms of 5 years and may be reappointed. The commissioner of energy resources shall serve as chair of the council. A representative of energy efficiency experts shall not have a contractual relationship with any electric or natural gas distribution company, electricity or natural gas provider, or any municipal aggregator. There shall be 1 non-voting, ex-officio member from each of the electric and natural gas distribution utilities, 1 from each of the approved municipal aggregators, 1 from the heating oil industry and 1 from the energy efficiency businesses.

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

(c) The council may retain expert consultants provided that such consultants shall not have any contractual relationship with an electric or natural gas distribution utility or provider. The council shall annually submit to the department a proposal regarding the level of funding required for the retention of expert consultants and reasonable administrative costs. The proposal shall be approved by the department either as submitted or as modified by the department. The department shall allocate funds sufficient for these purposes from the natural gas and electric efficiency funding authorized under section 19; provided, however, that such allocation shall not exceed 1 per cent of

such funding on an annual basis. The consultants used under this section shall be experts in energy efficiency and shall be independent and not in receipt of funds from any funding connected with energy efficiency or demand response programs, except as in the capacity as third party independent experts.

(d) The electric and natural gas distribution utilities and municipal aggregators shall provide quarterly reports to the council on the implementation of the plan. The reports shall include a description of the each utility's progress in implementing the plan, a summary of the savings secured to date and such other information as the council shall determine. The council shall provide an annual report to the department and the joint committee on telecommunications, utilities and energy on the implementation of the plan which includes descriptions of the programs, expenditures, cost-effectiveness and savings and other benefits during the previous year.

SECTION 12. Section 3 of chapter 25A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the definition of "Energy management services" the following definition:-

"Energy savings", a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of 1 or more energy conservation measures or projects, provided that any payback analysis to evaluate the energy savings of a geothermal energy system to provide heating, cooling or water heating over its expected lifespan shall include gas and electric consumption savings, maintenance savings and shall use an average escalation rate based on the most recent information for gas and electric rates compiled by the Energy Information Administration of the United States Department of Energy.

SECTION 13. Section 5 of said chapter 25A, as so appearing, is hereby amended by striking out, in lines 2 and 3, the words "energy, the joint committee on government regulations", and inserting in place thereof the following words:- telecommunications, utilities and energy.

SECTION 14. Section 10 of said chapter 25A is hereby repealed.

SECTION 15. Section 11F of said chapter 25A, as so appearing, is hereby further amended by striking out subsections (a) and (b) and inserting in place thereof the following 10 subsections:-

Section 11F. (a) The division of energy resources shall establish a renewable energy portfolio standard for all retail electricity suppliers selling electricity to end-use customers in the commonwealth. By December 31, 1999, the department shall determine the actual percentage of kilowatt-hours sales to end-use customers in the commonwealth which is derived from existing renewable energy generating sources. Every retail supplier shall provide a minimum percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable energy generating sources, according to the following schedule: (i) an additional 1 per cent of sales by December 31, 2003, or one calendar year from the final day of the first month in which the average cost of any renewable technology is found to be within 10 per cent of the overall average spot-market price per kilowatt-hour for electricity in the commonwealth, whichever is sooner; (ii) an additional one-half of 1 per cent of sales each year thereafter until December 31, 2009; and (iii) an additional 1 per cent of sales every year thereafter. For the purpose of this subsection, a new renewable energy generating source is one that begins commercial operation after December 31, 1997, or that represents an increase in generating capacity after December 31, 1997, at an existing

facility. Commencing on January 1, 2008, such minimum percentage requirement shall be known as the “Class I” renewable energy generating source requirement.

(b) For the purposes of this section, a renewable energy generating source is one which generates electricity using any of the following: (i) solar photovoltaic or solar thermal electric energy; (ii) wind energy; (iii) ocean thermal, wave, or tidal energy; (iv) fuel cells utilizing renewable fuels; (v) landfill gas; (vi) waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (vii) naturally flowing water and hydroelectric; (viii) low-emission advanced biomass power conversion technologies using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel; and (ix) geothermal energy; provided, however, that after December 31, 1998, the calculation of a percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable generating sources shall exclude clauses (vi) and (vii) herein. The division may also consider any previously operational biomass facility retrofitted with advanced conversion technologies as a renewable energy generating source. A renewable energy generating source may be located behind the customer meter within the ISO NE control area provided that the output is verified by an independent verification system participating in the NEPOOL GIS accounting system and approved by the division.

(c) Commencing on January 1, 2008, such new renewable energy generating sources meeting the requirements of this paragraph shall be known as Class I renewable energy generating sources. For the purposes of this section, a Class I renewable energy generating source is one that begins commercial operation after December 31, 1997, or the net increase from incremental new generating capacity after December 31, 1997 at an existing facility, where the facility generates electricity using any of the following: (i) solar photovoltaic or solar thermal electric energy; (ii) wind energy; (iii) ocean thermal, wave, or tidal energy; (iv) fuel cells utilizing renewable fuels; (v) landfill gas; (vi) energy resulting from new hydroelectric facilities regulated by FERC, or incremental energy from increased capacity or efficiency improvements at existing hydroelectric facilities regulated by FERC, so long as such energy from new facilities or from increased capacity and efficiency does not involve pumped storage of water; provided that only energy from new facilities or from improvements at an existing hydroelectric facility entering commercial operation after January 1, 1998, and only energy from facilities up to 25 megawatts of capacity shall be considered new renewable energy; (vii) low-emission, advanced biomass power conversion technologies, such as gasification using fuels such as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel; or (viii) geothermal energy. A Class I renewable generating source may be located behind the customer meter within the ISO NE control area provided that the output is verified by an independent verification system participating in the NEPOOL GIS accounting system and approved by the division.

(d) Commencing on January 1, 2009, every retail electric supplier providing service under contracts executed or extended on or after January 1, 2009, shall also provide a minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth from Class II renewable energy generating sources. For the purposes of this section, a Class II renewable energy generating source is one that began commercial operation before December 31, 1997 and generates electricity using any of the following: (i) solar photovoltaic or solar thermal electric energy; (ii) wind energy; (iii) ocean thermal, wave, or tidal energy; (iv) fuel cells utilizing renewable fuels; (v) landfill gas; (vi) waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (vii) low-emission biomass power conversion technologies, such as

gasification using fuels such as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel or (viii) geothermal energy. A Class II renewable generating source may be located behind the customer meter within the ISO NE control area provided that the output is verified by an independent verification system participating in the NEPOOL GIS accounting system and approved by the division.

(e) On or before January 1, 2009, every retail supplier shall annually provide to end-use customers in the commonwealth, generation attributes from Class II energy facilities in amount approved by the division; provided, that the division may specify that a certain percentage of these requirements must be met through energy generated from a specific technology or fuel type in subsection (d). Such minimum percentage requirement for kilowatt-hour sales from Class II energy generating sources may be adjusted by the division as necessary to promote the continued operation of existing energy generating resources that meet the requirements of subsection (d), and may be met through kilowatt-hour sales to end-use customers from any energy generating source meeting the requirements of said subsection (d).

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

(g) In satisfying its annual obligations under subsection (a), each retail supplier shall provide a portion of the required minimum percentage of kilowatt-hours sales from new on-site renewable energy generating sources located in the Commonwealth and having a power production capacity of not more than 2 megawatts which began commercial operation after December 31, 2007, including, but not limited to, behind the meter generation, and other similar categories of generation determined by the division. The portion of the required minimum percentage required to be supplied by such on-site renewable energy generating sources shall be established by the division; provided, that the division may specify that a certain percentage of these requirements must be met through energy generated from a specific technology or fuel type.

(h) The division shall establish and maintain regulations allowing for a retail supplier to discharge its obligations under subsection (g) by making an alternative compliance payment in an amount established by the division; provided, that the division shall set on-site generation alternative compliance payment rates at levels that will stimulate the development of new on-site renewable energy generating sources.

SECTION 16. Said chapter 25A, as so appearing, is hereby further amended by adding the following section:-

Section 11F1/2. (a) The division of energy resources shall establish an alternative energy portfolio standard for all retail electricity suppliers selling electricity to end-use customers in the commonwealth. Beginning January 1, 2009, every retail electric supplier providing service under

contracts executed or extended on or after January 1, 2009 shall provide a minimum percentage of kilowatt-hour sales, as determined by the division, to end-use customers in the commonwealth from alternative energy generating sources, and the division shall annually thereafter determine the minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth which shall be derived from alternative energy generating sources. For the purposes of this section, an alternative energy generating source is one which generates electricity using any of the following: (i) coal gasification with capture and permanent sequestration of carbon dioxide, provided that the fuel must be purchased by and contractually transported to the alternative energy generating source in ISO-NE; (ii) plasma gasification; (iii) combined heat and power; (iv) flywheel energy storage; (v) any facility which substitutes any portion of its fossil fuel source with an equal to or greater portion of an alternative, paper-derived fuel source approved by the department of environmental protection through a Beneficial Use Determination for the production of heat or power; or (vi) any other alternative energy technology approved by the division under an administrative proceeding conducted under chapter 30A; provided, however, that the following technologies shall not be considered alternative energy supplies: coal, except when used in coal gasification, oil, natural gas, except when used in coal gasification or combined heat and power, and nuclear power.

(b) The division shall set: (i) emission performance standards, including for CO<sub>2</sub>, and fuel conversion efficiency standards for all technologies included in this section consistent with the state's environmental goals, including but not limited to the reduction of greenhouse gas emissions; and (ii) a net emissions rate including thermal delivery, combustion, gasification, fuel processing, and sequestration. At least once every two years the division shall review and update, if necessary, all standards for new alternative energy generating sources to require best available emissions control technologies and all feasible efficiency improvements.

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

SECTION 17. Said chapter 25A is hereby further amended by inserting after section 11I the following section:-

Section 11J. (a) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Generator”, the person that owns, directly or indirectly, the renewable energy generating source that is located in a control area adjacent to the ISO New England Control Area, but does not include any person under contract with the Generator to purchase the renewable energy or renewable energy credits associated with such renewable energy.

“Person”, any individual, corporation, limited liability company, general or limited partnership, trust, association or other entity.

(b) A renewable energy generating source as described in section 11F that is physically located in or relocated to a control area adjacent to the ISO New England (“ISO-NE”) control area

may qualify as an eligible renewable energy generating source under section 11F, provided however, that the renewable energy electricity generated by such renewable energy generating source was delivered into and used by consumers within the ISO-NE control area.

(c) The delivery of renewable energy into the ISO-NE as described in subsection (b) shall not qualify under the renewable portfolio standard, notwithstanding such delivery into the ISO-NE control area, unless the Generator of such renewable energy: (i) initiates the import transaction under a bilateral sales contract with a purchaser of the renewable energy located in the ISO-NE control area by properly completing a North American Electric Reliability Council tag from the Generator in the adjacent control area to either a node or zone in the ISO-NE control area; and (ii) complies with all ISO-NE rules and regulations required to schedule and deliver all of the renewable energy generating source's energy or capacity into the ISO-NE control area.

(d) During any period during which the generator, or any person under contract with the Generator, is delivering renewable energy from the renewable energy generating source into the ISO-NE control area, and notwithstanding compliance with subsection (b), the renewable energy generated by the renewable energy generating source that is eligible for the renewable portfolio standard shall be limited to the lesser of the following: (i) the renewable energy actually generated by the renewable energy generating source; (ii) the renewable electricity actually scheduled and delivered into the ISO-NE control area from the renewable energy generating source in compliance with subsection (b); or (iii) the renewable energy generating source's capacity rating adjusted for its outages.

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

(f) The division through duly adopted regulations may require such other requirements as it deems appropriate consistent with this section.

SECTION 18. Section 12 of said chapter 25A, as appearing in the 2006 Official Edition, is hereby amended by inserting after the word "on", in line 15, the following words:- telecommunication, utilities and.

SECTION 19. Said chapter 25A is hereby further amended by adding the following 2 sections:-

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

"Building authority", the University of Massachusetts Building Authority, the Southeastern Massachusetts University Building Authority, the University of Lowell Building Authority or any other building authority which may be established for similar purposes.

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

“Governmental body”, a city, town, district, regional school district, county, or agency, board, commission, authority, department or instrumentality of a city, town, district, regional school district or county, and all other public agencies which are not a state agency or building authority.

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

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

“Public agency”, a department, agency, board, commission, authority, or other instrumentality of the commonwealth or political subdivision of the commonwealth or 2 or more subdivisions thereof.

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

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

“State agency”, a state agency, board, bureau, department, division, section, or commission of the commonwealth.

(b) A public agency may, in the manner provided by this section, contract for the procurement of energy management services. Such contracts may include terms of 10 years or less. Contracts which include cogeneration projects shall have terms of 20 years or less. The public agency shall solicit competitive sealed proposals through a request for proposals. At least 1 week prior to soliciting proposals for a contract under this section, a public agency shall notify the secretary in writing, in such form and including such information as the secretary shall prescribe by regulation, of the agency’s intent to solicit proposals. Such notification shall, at a minimum, include a complete copy of the agency’s request for proposals. An acknowledgment of receipt, in such form and by including such information as the secretary shall prescribe by regulation, shall be issued to the public agency upon successful compliance with the requirements of this paragraph.

Requests for proposals for an energy management services contract to be entered into on behalf of a state agency or a building authority, shall be developed jointly by the division of capital asset management and maintenance and the using agency. Such proposals shall only be solicited by the division of capital asset management and maintenance after the commissioner of said division has given his prior written approval, and no contract for energy management services shall be valid unless approved and signed by said commissioner. Said commissioner may delegate to state



agencies and building authorities the authority to enter into such contracts with an estimated construction cost of less than \$200,000. Such delegation shall be in writing from the commissioner to the regulating agency or building authority.

The request for proposals published by a public agency under this section shall include: (i) the time and date for receipt of proposals and the address of the office to which the proposals are to be delivered; (ii) a description of the services to be procured, including specific requirements and all evaluation criteria that will be utilized by the state agency or building authority; and (iii) proposed contract terms and conditions and an identification of such terms and conditions which shall be deemed mandatory and nonnegotiable. The request for proposals may incorporate documents by reference, provided that the request for proposals specifies where prospective offerors may obtain the documents. The public agency shall make copies of the request for proposals available to all persons on an equal basis. Public notice of the request for proposals shall conform to the procedures set forth in subsection (1) of section 44J of chapter 149. Proposals shall be opened publicly, in the presence of 2 or more witnesses, at the time specified in the request for proposals, and shall be available for public inspection.

The provisions of sections 44A and 44B and sections 44E to 44H, inclusive, of chapter 149 shall not apply to contracts procured under this section. The provisions of section 44D of said chapter 149 shall apply as appropriate to proposals submitted for contracts under this section, and every such proposal shall be accompanied by: (i) a copy of a certificate of eligibility issued by the commissioner of the division of capital asset management and maintenance; and (ii) an update statement. The offeror's qualifications shall be evaluated by the division of capital asset management and maintenance in a manner designated by the commissioner of said division. If the public agency determines that any offeror is not responsible or eligible, the public agency shall reject the offer and give written notice of such action to the division of capital asset management and maintenance.

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

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

(c) The provisions of this subsection shall apply to a governmental body procuring contracts under this section.

Unless no other manner of description suffices, and the governmental body so determines in writing, setting forth the basis for the determination, all requirements shall be written in a manner which describes the requirements to be met without having the effect of exclusively requiring a proprietary supply or service or a procurement from a sole source.

Subject to a governmental body's authority to reject, in whole or in part, any and all proposals, as provided in this section, a governmental body shall unconditionally accept a proposal without alternation or correction, except as provided in this paragraph. An offeror may correct,

modify, or withdraw a proposal by written notice received in the office designated in the request for proposals prior to the time and date set for opening the proposals. After proposal opening, an offeror may not change any provisions of the proposal in a manner prejudicial to the interests of the governmental body or fair competition. The governmental body shall waive minor informalities or allow the offeror to correct them. If a mistake and the intended proposal are clearly evident on the face of the proposal document, the governmental body shall correct the mistake to reflect the intended correction and so notify the offeror in writing, and the offeror may not withdraw the proposal. An offeror may withdraw a proposal if a mistake is clearly evident on the face of the proposal but the intended correction is not similarly evident.

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

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

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

The public agency shall state in writing the reason for a cancellation or rejection. The public agency shall promptly publish in the central register notice of the offeror awarded the contract. The public agency shall, within 30 days, file a copy thereof with the secretary.

The secretary, in consultations with the commissioner of the division of capital asset management and maintenance, shall promulgate regulations for the procurement of energy management services under this section, provided however, that the commissioner of the division of capital asset management and maintenance shall promulgate regulations for services to be procured for state agencies and building authorities; and provided, further, that regulations affecting the operations of housing authorities within the jurisdiction of the department of housing and community development shall be promulgated in consultation with the director of housing and community development. Such regulations may limit the scope of services procured and the duration of contracts, and shall include any requirements that the secretary or commissioner of the division of capital asset management and maintenance deems necessary to promote prudent management of such contracts at the appropriate facilities. Such regulations shall require the submission, at least annually, of such information as the secretary or commissioner of the division

of capital asset management and maintenance may deem necessary in order to monitor the costs and benefits of contracts for energy management services.

(e) The secretary shall enforce the requirements of this section and regulations promulgated hereunder as they relate to public agencies except for state agencies and building authorities and shall have all the necessary powers to require compliance therewith. The commissioner of the division of capital asset management and maintenance shall enforce all such regulations as they relate to state agencies and building authorities. Any order of the secretary under this subsection shall be effective and may be enforced according to its terms, and enforcement thereof shall not be suspended or stayed by the entry of an appeal. The superior court for Suffolk county shall have jurisdiction over appeals of orders of the secretary under this subsection, and shall also have jurisdiction upon application of said secretary to enforce all orders of said secretary under this subsection. The burden of proof shall be upon the appealing party to show that the order of said secretary is invalid. An aggrieved person shall not be required to seek an order from said secretary as a condition precedent to seeking any other remedy.

(d) Local authorities may amend existing energy service agreements to bring products and services to additional buildings or assets in the community. The amendments may be accomplished through negotiation with the energy service provider.

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

“Eligible”, able to meet all requirements for offerors or bidders set forth in this section including, without limitation, being certified by the division of capital asset management and maintenance as eligible to provide energy management systems services and not debarred from bidding under section 44C of chapter 149 or any other applicable law.

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

“Energy conservation projects”, projects to promote energy conservation, including but not limited to, energy conserving modification to windows and doors; caulking and weather-stripping; insulation, automatic energy control systems; hot water systems; equipment required to operate variable steam, hydraulic and ventilating systems; plant and distribution system modifications including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; and cogeneration systems.

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

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

“Energy savings”, a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of 1 or more energy management services when compared with an established baseline of previous fuel, energy, operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed under the guaranteed energy savings contract.

“Guaranteed energy savings contract”, a contract for the evaluation, recommendation or implementation of 1 or more energy management services in which payments are based, in whole or in part, on any energy savings attributable to the contract.

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

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

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

“Request for qualifications”, a solicitation directed to qualified providers issued by a public agency to obtain energy management services under a guaranteed energy savings contract subject to this section. The request for qualifications shall include the following: (i) the name and address of the public agency; (ii) the name, address, title and phone number of a contact person; (iii) The date, time and place where qualifications must be received; (iv) a description of the services to be procured, including a facility profile with a detailed description of each building involved and accurate energy consumption data for the most recent 2 year period, stated objectives for the program, a list of building improvements to be considered or required and a statement as to whether the proposed improvements will generate sufficient energy savings to fund the full cost of the program; (v) The evaluation criteria for assessing the qualifications; (vi) a statement that the public agency may cancel the request for qualifications or may reject in whole or in part any and all energy savings measures when the public agency determines that cancellation or rejection serves the best interests of the public; (vii) any other stipulations and clarifications the public agency may require, which shall be clearly identified in the request for qualifications.

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

(b) A public agency may choose to use this section in the procurement of energy management services as an alternative to the procedures set out in section 11C. Nothing in this section shall preclude any such agency from choosing to proceed thereafter under said section 11C. A public agency may enter into a guaranteed energy savings contract in order to achieve energy savings at facilities in accordance with this section. All energy savings measures shall comply with current local, state and federal construction, and environmental codes and regulations. Prior to entering into a guaranteed energy savings contract, a public agency shall issue a request for qualifications. Public notice of the request for qualifications shall conform to the procedures set forth in subsection (1) of section 44J of chapter 149. At least 1 week before soliciting a request for qualifications for a guaranteed energy savings contract, a public agency shall notify the commissioner of energy resources in writing, in a form and including information as the commissioner of the division of capital asset management and maintenance shall prescribe by regulation, of the agency’s intent to solicit qualifications. The notification, at a minimum, shall include a copy of the agency’s request for qualifications. An acknowledgment of receipt, in a form and including information as the commissioner of the division of capital asset management and maintenance shall prescribe by regulation, shall be issued by the commissioner of energy resources to the public agency upon successful compliance with the requirements of this subsection. Qualifications shall be opened publicly, in the presence of 2 or more witnesses, at the time specified in the request for qualifications, and shall be available for public inspection. The provisions of sections 44A and 44B and sections 44E to 44H, inclusive, of said chapter 149 shall not apply to contracts procured under this section. Section 44D of said chapter 149 shall apply as appropriate to qualifications submitted for contracts under this section, and every such qualification shall be accompanied by (1) a copy of a certificate of eligibility issued by the commissioner of the division of capital asset management, and (2) by an update statement.

The public agency shall evaluate the qualified providers to determine which best meets the needs of the public agency by reviewing the following: (i) references of other energy savings contracts performed by the qualified providers; (ii) the certificate of eligibility and update statement provided by the qualified providers; (iii) the quality of the products proposed; (iv) the methodology of determining energy savings; (v) the general reputation and performance capabilities of the qualified providers; (vi) substantial conformity with the specifications and other conditions set forth in the request for qualifications; (vii) the time specified in the qualifications for the performance of the contract; and (viii) any other factors the public agency considers reasonable and appropriate, which factors shall be made a matter of record.

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

The public agency shall conduct discussions with, and may require public presentations by, each person who submitted qualifications in response to the request for qualifications regarding their qualifications, approach to the project and ability to furnish the required services. The public agency shall select in order of preference 3 such persons, unless fewer persons respond, they consider to be the most highly qualified to perform the required services. The agency may request, accept and consider proposals for the compensation to be paid under the contract only during competitive negotiations conducted under subsection (f).

(c) The public agency may cancel a request for qualifications, or may reject in whole or in part any and all proposals when the public agency determines that cancellation or rejection serves the best interests of the public agency. The public agency shall state in writing the reason for a cancellation or rejection.

(d) The public agency shall negotiate a contract with the most qualified person at compensation which the public agency determines is fair, competitive and reasonable. Should the public agency be unable to negotiate a satisfactory contract with the person considered to be the most qualified at a price the public agency determines to be fair, competitive and reasonable, negotiations with that person shall be formally terminated. The public agency shall then undertake negotiations with the second most qualified person. Failing accord with the second most qualified person, the public agency shall terminate those negotiations and then undertake negotiations with the third most qualified person. Should the public agency be unable to negotiate a satisfactory contract with any of the selected persons, the public agency may select additional qualified providers who responded to the request for qualifications, in the order of their competence and qualification, and continue negotiations in accordance with this subsection until either an agreement is reached or the public agency cancels the request for qualifications.

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

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

(g) The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the amount of energy savings guaranteed will be achieved or the qualified provider shall reimburse the public agency for the shortfall amount. Methods for measurement and verification of guaranteed savings shall conform to the most recent standards established by the Federal Energy Management Program of the United States Department of Energy. The secretary shall enforce the requirements of this section and regulations promulgated hereunder as they relate to public agencies except for state agencies and building authorities and shall have all the necessary powers to require compliance therewith. The commissioner of the division of capital asset management and maintenance shall enforce the regulations as they relate to state agencies and building authorities. Any order of the commissioner of energy resources under this subsection shall be effective and may be enforced according to its terms, and enforcement thereof shall not be suspended or stayed by the entry of an appeal. The superior court for Suffolk County shall have jurisdiction over appeals of orders of the commissioner of energy resources under this subsection, and shall also have jurisdiction upon application of the commissioner to enforce all orders of the commissioner under this subsection. The burden of proof shall be upon the appealing party to show that the order of the commissioner is invalid. An aggrieved person shall not be required to seek an order from the commission as a condition precedent to seeking any other remedy. The value of

guaranteed savings may represent either all, or part of annual payments at the discretion of the agency. The guaranteed energy savings contract term for providing a guarantee, measurement and verification, maintenance, service and installment or lease payments shall not exceed 20 years. The division of capital asset management and maintenance, in concurrence with the state inspector general, shall promulgate regulations for the procurement of energy management services, including establishing safeguards to be included in guaranteed energy savings contracts. The regulations shall require the submission, at least annually, of information as the commission of the division of capital asset management and maintenance and the state inspector general consider necessary in order to monitor the costs and benefits of contracts for energy management services.

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

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

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

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

(l) Local authorities may amend existing energy service agreements to bring products and services to additional buildings or assets in the community. The amendments may be accomplished through negotiation with the energy service provider.

SECTION 20. Section 4A of chapter 40J of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 7, the word "five" and inserting in place thereof the following figure:- 30.

SECTION 21. Section 4E of said chapter 40J, as so appearing, is hereby amended by inserting after the word "energy", in line 18, the following words:- , energy conservation and efficiency.

SECTION 22. Said section 4E of said chapter 40J, as so appearing, is hereby further amended by inserting after the word "commonwealth", in line 30, the following words:- , together with such other initiatives and activities as the board may deem appropriate to further the public purposes of the fund.

SECTION 23. Said section 4E of said chapter 40J, as so appearing, is hereby further amended by striking out, in line 44, the words "and (vi)" and inserting in place thereof the following

words:- (vi) the promotion of energy conservation and efficient energy use and the development and use of green buildings; and (vii).

SECTION 24. Said section 4E of said chapter 40J, as so appearing, is hereby further amended by inserting after the word “expend”, in line 48, the following words:- or pledge.

SECTION 25. Said section 4E of said chapter 40J is hereby further amended by inserting after the word “resources”, in line 74, the following words:- including, without limitation, the promotion and development of energy-efficient green buildings, particularly in affordable housing and schools and other public buildings. Notwithstanding this section, at least 10 per cent of the fund shall be dedicated to energy efficiency projects and activities undertaken by or for the benefit of cities and towns, including without limitation energy conservation measures and projects, procurement of energy management services, installation of energy management systems, adoption of demand side reduction initiatives, adoption of energy efficiency policies and the siting and construction of renewable energy, combined heat and power or distributed generation facilities on municipally owned properties.

SECTION 26. Said section 4E of said chapter 40J, as so appearing, is hereby further amended by inserting after the word "engine", in line 146, the following words:- ; and provided further, that the board shall make grants, loans or other support from the fund, not to exceed a total of \$3,000,000 annually, for hydroelectric facilities, other than pumped storage facilities, in the Commonwealth constructed prior to December 31, 1997 for upgrades to increase the efficiency or capacity and to reduce any environmental impacts.

SECTION 27. Said section 4E of said chapter 40J, as so appearing, is hereby further amended by striking out subsection (i) and inserting in place thereof the following subsection:-

(i) The corporation shall be assisted in the implementation of this section by an oversight board consisting of not more than 15 individuals, which shall include 2 members to be appointed by the speaker of the house, 2 members to be appointed by the president of the senate, the secretary of housing and economic development or a designee, the attorney general or a designee, the secretary of energy and environmental affairs or a designee, the chair of the department of public utilities, the executive director of the Massachusetts municipal association or a designee, and no more than 6 individuals appointed by the governor, from the recommendation submitted by the chair of the board relating to clause (i) of said section 4, with an interest in matters related to the general purpose and activities of the fund and the knowledge and experience in at least one of the following areas: electricity distribution, generation, supply, or power marketing; the concerns of commercial and industrial ratepayers; residential ratepayers, including low-income ratepayers; economics, financial or investment consulting expertise relative to the fund; regional environmental concerns; academic issues related to power generation, distribution or the development or commercialization of renewable energy sources; institutions of higher education; municipal or regional aggregation matters; and renewable and clean energy issues. The board shall consult with said oversight board in discharging its obligations under this section.

SECTION 28. Said section 4E of said chapter 40J, as so appearing, is hereby further amended by striking out subsection (k) and inserting in place thereof the following subsection:-



(k) Beginning with the fiscal year ending on June 30, 2009, on or by August 15<sup>th</sup> of each year, the board, in conjunction with the oversight board, shall annually submit to the governor, the joint committee on telecommunications, utilities and energy, and the house and senate committees on ways and means a report detailing the expenditure and investment of monies from the fund over the previous fiscal year and the ability of the fund to meet the requirements and provisions of this section, progress in the implementation of the strategic plan described in paragraph (m) including any recommendations regarding necessary modifications to the plan, and any recommendations for improving the ability of the board, the corporation, and the fund to meet said requirements and provisions. The oversight board shall be given the opportunity to review and comment on said report before its filing, and said filing shall include any such comments.

SECTION 29. Said section 4E of said chapter 40J, as so appearing, is hereby further amended by adding the following subsection:-

(m) Cost share payments made by the corporation in connection with incentive programs to support the installation of renewable energy systems as energy conservation measures are payments funded with monies collected by public utilities from the ratepayers of the commonwealth which, under section 20 of chapter 25, are deposited into the Massachusetts Renewable Energy Trust Fund, and are made primarily for the purpose of protecting and restoring the environment and are not intended to and do not substantially increase the annual income derived from the property at which the installation is made.

SECTION 30. Said section 4E of said chapter 40J, as so appearing, is hereby further amended by inserting after the word “technologies” in line 259, the following words:- or the purchase of debt obligations of the corporation issued for the purposes of the fund.

SECTION 31. Said section 4E of said chapter 40J, as so appearing, is hereby further amended by inserting after the word “certificates” in line 260, the following words:- or debt obligations.

SECTION 32. Said section 4E of said chapter 40J, as so appearing, is hereby further amended by inserting after the word “certificates”, in line 261, the following words:- or with the purchasers of such debt obligations, as the case may be,

SECTION 33. Said paragraph (l) is hereby further amended by inserting after the word “contracts” in lines 266 and 267 the following words:- or during the term, which shall not exceed 20 years, or any such debt obligations; provided, that in no event shall the principal amount of a debt obligation of the corporation sold in a fiscal year exceed 10 per cent of the amounts collected under said section 20 in the preceding fiscal year.

SECTION 34. Section 5 of said chapter 40J, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

In formulating plans for the establishment of centers or the undertaking of other activities under the provisions of this chapter, the corporation shall be authorized to consult with and utilize the services of the executive office of energy and environmental affairs, and the division of energy resources therein, the executive office of housing and economic development, and the department of business and technology therein, and the Massachusetts Development Finance Agency for such

technical assistance as the board deems necessary or appropriate to the effective discharge of the corporation's responsibilities.

SECTION 35. Section 7 of chapter 44 of the General Laws, as so appearing, is hereby amended by striking out clause (3B) and inserting in place thereof the following clause:-

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

SECTION 36. Paragraph (l) of section 1 of chapter 64A of the General Laws, as so appearing, is hereby amended by inserting after the first sentence the following 4 sentences:- Notwithstanding the preceding sentence and subject to section 20 of chapter 29, for fuel consisting of a blend of gasoline and ethanol, the tax per gallon shall be reduced in proportion to the percentage of the fuel content, measured by volume that consists of ethanol derived from cellulosic feedstocks grown in a sustainable manner. Entities wishing to obtain the aforesaid tax reduction for cellulosic ethanol shall provide documentation satisfactory to the division of energy resources that such fuel is produced from feedstocks that are grown in a sustainable manner. The division shall promulgate regulations to effectuate the provisions of this subsection, provided, that for the purposes of this subsection, the term "sustainable manner" shall be consistent with the definition of sustainable as defined in this chapter. The division, in consultation with the department of revenue, shall so promulgate regulations concerning the timing and form of documentation that will enable the department to determine the appropriate tax revenue to be collected.

SECTION 37. Said section 1 of said chapter 64A, as so appearing, is hereby further amended by adding the following 4 paragraphs:-

(m) "Ethanol", the clear, colorless, flammable oxygenated hydrocarbon with the chemical formula  $C_2H_5OH$ , also known as ethyl alcohol or grain alcohol, that can be derived from biomass materials and used as a fuel to power motor vehicles.

(n) "Cellulosic feedstocks", cellulosic plant material composed primarily of cellulose, hemicellulose or lignin that can be converted into ethanol.

(o) "Sustainable", the ability of a natural resource to yield a stable output of usable products indefinitely without causing significant damage to ecosystem health or pollution-control capacity.

(p) "Cellulosic fuel", ethanol derived from cellulosic feedstocks grown in a sustainable manner.

SECTION 38. Section 221 of chapter 112 of the General Laws, as so appearing, is hereby amended by inserting after the word "components", in lines 19 and 20, the following words:- , as well as home energy score.

SECTION 39. Section 3 of chapter 143 of the General Laws, as so appearing, is hereby amended by inserting after the word "structure", in line 55, the following words:- , and the energy requirements imposed by clause (n) of section 94.

SECTION 40. Said section 94 of said chapter 143, as so appearing, is hereby amended by inserting after the word “ninety-six”, in line 61, the following words:- and including the energy conservation code.

SECTION 41. Said section 94 of said chapter 143, as so appearing, is hereby further amended by adding the following 4 clauses:-

(m) To adopt and fully integrate the latest International Energy Conservation Code, or IECC, as part of the state building code, together with any more stringent energy-efficiency provisions that the board, in consultation with the division of energy resources, concludes are warranted. The energy provisions of the State Building Code shall be updated within 1 year of any revision to the IECC.

(n) In consultation with the division of energy resources, to develop requirements and promulgate regulations as part of the State Building Code for the training and certification of city and town inspectors of buildings, building commissioners, and local inspectors regarding the energy provisions of the State Building Code, and to require that all new construction and any major reconstruction, alteration, or repair of residential and non-residential buildings pass inspection by inspectors who have been trained and certified, demonstrating full compliance with the energy provisions of the State Building Code.

(o) In consultation with the division of energy resources, to develop requirements and promulgate regulations as part of the State Building Code, in addition to the requirements of the latest IECC, requiring a process to ensure that all new non-residential buildings larger than 10,000 square feet and any major reconstruction, alteration, or repair of all non-residential buildings larger than 10,000 square feet perform as designed with respect to energy consumption by undergoing building commissioning or acceptance testing. Such commissioning must be completed before the issuance of a certificate of occupancy.

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

SECTION 42. Chapter 159 of the General Laws is hereby amended by striking out section 10, as amended by section 30 of chapter 19 of the acts of 2007, and inserting in place thereof the following section:-

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

SECTION 43. Chapter 164 of the General Laws is hereby amended by striking out section 1, as amended by section 36 of said chapter 19, and inserting in place thereof the following section:-

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

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

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

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

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

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

"Articles of organization", (i) the articles of organization of a corporation which were filed subsequent to October 1, 1973, (ii) any agreement of association, special act of incorporation, and other charter documents, including by-law provisions and stockholder votes in effect prior to October 1, 1973, which, subsequent to that date, would be included in articles of organization, and all amendments thereto, effective prior to October 1, 1973, and (iii) any of the following amendments made or filed from time to time subsequent to October 1, 1973:

- (1) a certificate of a vote establishing a series filed under section 26 of chapter 156B;
- (2) articles of amendment filed under section 8B;
- (3) restated articles of organization filed under section 8C;
- (4) certificates of confirmation of proceedings filed under section 8D;
- (5) articles of consolidation or merger filed under section 102A;
- (6) articles of dissolution filed under section 100 of chapter 156B;
- (7) a certificate as to the revival of a corporation filed under section 108 of chapter 156B.

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

“Cogeneration facility”, any electrical generating unit having a power production capacity which, together with any other facilities located at the same site, is not greater than thirty megawatts and which produces electric energy and steam or other form of useful energy utilized for industrial, commercial, heating or cooling purposes, and employs a fuel other than oil or gas as its primary energy source, except that gas may be used if it is produced from coal, biomass, solid waste, or wood and oil may be used (1) in combination with coal, in a mixture not exceeding 70 per cent oil, or (2) during any modifications to any existing electrical generating facility undertaken for the purpose of enabling such facility to employ, except during any periods of maintenance or repair, a fuel other than oil or gas as its primary energy source. A cogeneration facility shall also include any electric generating unit having a power production capacity which, together with any other facilities located at the same site, is not greater than 30 megawatts and which produces electric energy and steam or other form of useful energy utilized for industrial, commercial, heating or cooling purposes that is within the confines of an industrial park, which park existed prior to March 1, 1982 and, in which park there existed, as of said date, electrical generating capacity of more than 15 megawatts, and in which park there existed, since said date, a cogeneration facility, as defined herein, or a small power production facility.

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

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

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

“Department”, the department of public utilities.

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

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

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

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

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

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

"Electric service", the provision of generation, transmission, distribution, or ancillary services.

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

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

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

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

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

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

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

"FERC", the federal energy regulatory commission.

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

"Generation", the act or process of transforming other forms of energy into electric energy, or the amount of electric energy so produced.

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

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

"Generation service", the provision of generation and related services to a customer.

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

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

"ISO-NE", the independent system operator – New England.

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

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

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

"Primary energy source", the fuel or fuels used, except during periods of maintenance or repair, for the generation of electric energy, except that such term does not include the minimum amounts of fuel required for ignition, start-up, testing, flame stabilization, and control uses, and minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies declared by the governor, directly affecting the public health, safety, and welfare which would result from electric power outages.

"Renewable energy" or "renewables", either (i) resources whose common characteristic is that they are nondepletable or are naturally replenishable but flow-limited, or (ii) existing or emerging non-fossil fuel energy sources or technologies, which have significant potential for



commercialization in New England and New York, and shall include the following: solar photovoltaic or solar thermal electric energy; wind energy; ocean thermal, wave, or tidal energy; geothermal; fuel cells; landfill gas; waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; naturally flowing water and hydroelectric; and low-emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel. The following technologies or fuels shall not be considered renewable energy supplies: coal, oil, natural gas except when used in fuel cells, and nuclear power.

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

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

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

"Retail customer", a customer who purchases electricity for its own consumption.

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

"Service territory", the geographic area in which a distribution company provided distribution service on July 1, 1997.

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

“Steam distribution company,” any person, firm, partnership, association, private corporation organized under the laws of the commonwealth for the purpose of operating any plant or equipment or facilities for the manufacture, production, transmission, furnishing or distribution of steam to or for the public for compensation within the Commonwealth; provided however, that steam distribution company shall not mean: (i) an entity producing and distributing steam exclusively on private property and solely for the entity’s use or the use of the entity’s tenant, and not for distribution or sale; or (ii) a company that produces and sells steam as a bi-product of the production of electricity for sale in the wholesale electricity markets and does not own or operate pipelines off site of the generating facility for the distribution of steam.

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

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

"Transition charge", the charge that provides the mechanism for recovery of an electric company's transition costs.

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

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

"Transmission company", a company engaging in the transmission of electricity or owning, operating, or controlling transmission facilities. A transmission company shall provide transmission service to all generation companies, municipal lighting plants, suppliers, and load aggregators in the commonwealth, whether affiliated or not, on comparable, nondiscriminatory prices and terms, under provisions of federal law and regulation.

"Transmission facility", plant or equipment used for the transmission of electricity, as determined by the federal energy regulatory commission under federal law and regulation.

"Transmission service", the delivery of electricity to a retail customer, supplier, distribution company, or wholesale customer by a transmission company.

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

"Vertical market power", a situation in which one or a few market participants, having joint ownership of facilities at differing levels of the chain of production, such as generation, transmission, and distribution, possess the ability to use such joint ownership to influence price to the participants' own benefit.

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

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

SECTION 44. Subsection (f) of section 1A of chapter 164 of the General Laws is hereby repealed.

SECTION 45. Section 1A of said chapter 164, as appearing in the 2006 Official Edition, is hereby amended by adding the following subsection:-

(f) Nothing in this section and sections 1B to 1H, inclusive, shall be deemed to preclude an electric company or a distribution company from constructing, owning and operating one or more generation facilities that produce renewable energy, as defined in section 1 of this chapter 164, provided that such company may not own or operate more than 25 megawatts of such facilities before January 1, 2009, and 50 megawatts on and after January 1, 2010. No electric company or distribution company may recover costs associated with the construction, ownership or operation of a generating facility producing renewable energy. Each electric company or a distribution company shall file for pre-approval for construction, ownership, or operation of such generation facilities with the department. The department shall review each filing and shall determine whether the proposal is, in the department's judgment, consistent with the Commonwealth's energy policy, and could be used to satisfy, in part, the renewable energy portfolio standard requirements set forth in chapter 25, section 11F. The department shall issue an order within 4 months from the date of filing by the electric company or distribution company. The department may adopt such rules and regulations as may be necessary to implement this subsection.

SECTION 46. Section 1D of said chapter 164, as so appearing, is hereby amended by adding the following 2 paragraphs:-

Residential or small commercial customers (i) initiating new utility service, (ii) reinstating service following a change of residence or business location, (iii) making an inquiry regarding their rates, or (iv) seeking information regarding energy efficiency shall be offered the option to learn about their ability to enroll with a participating non-utility competitive supplier of energy. Customers expressing an interest to learn about their electric supply options shall be informed of offers available by participating non-utility competitive suppliers. The electric distribution company shall describe then available offers available through a method approved by the department. The information shall include, but not be limited to, the price and term of the available electric supply option. Customers expressing an interest in a particular non-utility competitive supplier offer available shall be immediately transferred to a call center operated by the participating non-utility competitive supplier.

Each calendar quarter, participating non-utility competitive suppliers of energy shall be allowed to list qualifying electric offers to provide electric generation service to residential and small commercial customers with each customer's utility bill. The department shall determine the manner such information is presented in customers' utility bills.

SECTION 47. Section 1E of said chapter 164, as so appearing, is hereby amended by striking out, in line 8, the words "service outages" and inserting in place thereof the following words:- , service outages, successful implementation of the electric and natural gas resources cost procurement plans, effective delivery of energy efficiency and demand side management.

SECTION 48. Section 1E of said chapter 164, as so appearing, is hereby further amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) Each distribution, transmission, and gas company shall file a report with the department by March 1 of each year comparing its performance during the previous calendar year to the department's service quality standards and any applicable national standards as may be adopted by the department. The department shall be authorized to levy a penalty against any distribution, transmission, or gas company which fails to meet the service quality standards in an amount up to and including the equivalent of 2 per cent of such company's transmission and distribution service for the previous calendar year. Each distribution and gas company also shall be required to file with the department an annual capital spending plan on such date specified by the department. Such filing also shall include a report on capital spending from the prior year's capital spending plan. To the extent the utility has not reasonably complied with the prior year's capital spending plan, the department shall be authorized to open an investigation. In any such investigation, the utility shall have the burden of proof to show whether it had good cause for failing to reasonably comply with the capital spending plan. If the utility does not meet its burden, the department may levy a financial penalty up to 2 per cent of transmission and distribution revenues, over and above any service quality penalty specified above, the amount of which shall depend upon the facts and circumstances and degree of fault. In addition to the annual capital spending plan, the gas and electric distribution companies are required to include a plan reasonably describing its program to comply with any inspection, maintenance, repair, and replacement requirements under any applicable federal standards and any other applicable state standards identified by the department. The department shall require each utility to maintain detailed records of its inspection and maintenance activities and to submit annual compliance reports to the department.

SECTION 49. Subparagraph (i) of paragraph (4) of section 1F of said chapter 164, as so appearing, is hereby amended by striking out the second and fourth paragraphs.

SECTION 50. Said paragraph (4) of said section 1F of said chapter 164, as so appearing, is hereby further amended by striking out subparagraphs (ii) and (iii) and inserting in place thereof the following subparagraph:-

(ii) A residential customer eligible for low-income discount rates shall receive the service on demand. Each distribution company shall periodically notify all customers of the availability of and method of obtaining low-income discount rates. An existing residential customer eligible for low-income discount on the date of start of retail access who orders service for the first time from a distribution company shall be offered basic service by that distribution company.

SECTION 51. Section 1G of said chapter 164, as so appearing, is hereby amended by striking out, in lines 366 and 367, the words "government regulations" and inserting in place thereof the following words:— telecommunications, utilities and energy.

SECTION 52. Section 47C of said chapter 164, as so appearing, is hereby amended by adding the following subsection:-

(l) The activities of a municipal lighting plant cooperative shall not be imputed to its individual members and the provision of energy and energy-related services by a municipal lighting

plant cooperative to retail customers shall not constitute the supply of generation services by its members for the purposes of subsection (b) of section 47A.

SECTION 53. Section 76D of said chapter 164, as so appearing, is hereby amended by inserting after the word “companies”, in lines 1 to 2, line 14 , the third time it appears, and in line 20, the second time it appears, in each instance, the following words:- , steam distribution companies.

SECTION 54. Said section 76D of said chapter 164, as so appearing, is hereby amended by inserting after the word “company”, in line 9, the following words:- , steam distribution company.

SECTION 55. Said chapter 164 is hereby further amended by inserting after section 76D the following section:-

Section 76E. The department shall adopt inspection, maintenance, repair, and replacement standards for the distribution systems of investor-owned electric and gas utilities doing business in the commonwealth no later than June 1, 2008. Said standards, which shall be performance or prescriptive standards, or both, as appropriate, for each substantial type of distribution equipment or facility, shall provide for inspection cycles for all overhead and underground facilities and shall establish a criteria for maintenance and replacement of said facilities to minimize or prevent service interruptions and to ensure high quality, safe and reliable service. In establishing the standards required by this section, the department shall consider cost, local geography and weather, applicable codes, national electric industry practices, sound engineering judgment, and experience. The department shall require each utility to maintain detailed records on its inspection and maintenance activities and to submit annual compliance reports to the department.

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

SECTION 56. Said chapter 164 is hereby further amended by striking out section 96, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

Section 96. Companies subject to this chapter and their holding companies may, notwithstanding any other provisions of this chapter or of any general or special law, consolidate or merge with one another, or may sell and convey their properties to another of such companies or to a wholesale generation company and such other company may purchase such properties, provided that such purchase, sale, consolidation or merger, and the terms thereof, have been approved, at meetings called therefor, by vote of the holders of at least two thirds of each class of stock outstanding and entitled to vote on the question of each of the contracting companies, and that the department, after notice and a public hearing, has determined that such purchase and sale or consolidation or merger, and the terms thereof, are consistent with the public interest. The purchase or sale of properties by, or the consolidation or merger of, wholesale generation companies shall not require departmental approval. The merger or consolidation of holding companies that has been filed and approved by the Federal Energy Regulatory Commission prior to the effective date of this section shall not be subject to the requirements of this section

SECTION 57. Section 116 of said chapter 164, as so appearing, is hereby amended by inserting after the word “secretary” in line 2, the following words:- or municipal lighting plant manager.

SECTION 58. Said section 116 of said chapter 164, as so appearing, is hereby further amended by inserting after the word “removal,” in lines 11 and 12, the following words:-the gas or electric company employing.

SECTION 59. Said section 116 of said chapter 164, as so appearing, is hereby further amended by striking out, in line 16, the word “such” and inserting in place thereof the following words:- a duly authorized.

SECTION 60. Said section 116 of said chapter 164, as so appearing, is hereby further amended by adding the following sentence :- A gas or electric company shall also be permitted to direct a duly authorized employee to restore meters, pipes, wires, fittings, works or service, consistent with the local bargaining agreement entered into by the company and the local bargaining unit to which the employee belongs.

SECTION 61. Said chapter 164 is hereby further amended by striking out section 124G, as so appearing, and inserting in place thereof the following section:-

Section 124G. A gas or electric company which shuts off gas or electric service of a residential customer in compliance with this chapter shall, upon receipt of full payment or such partial payment by such customer as the department deems satisfactory, restore full and complete service. A gas or electric company which shuts off gas or electric service of a residential customer eligible for the low-income energy assistance program in compliance with this chapter, shall restore service upon receipt of full or partial payment by or on behalf of such customer as the department deems satisfactory, but in no case greater than 25 per cent of the amount in arrears.

Gas and electric companies must offer any residential customer eligible for the low-income energy assistance program who has an account in arrears, but whose utility service has not yet been terminated, a payment plan of not less than 4 months including an initial down payment of not more than 25 per cent of the balance owed, and the remaining repayment balance amounts shall be divided equally; but, a company that seeks a repayment agreement of less than 4 months shall request approval from the department for good cause shown. A company making such a request shall notify the customer that the request has been made. This paragraph shall not limit the right of a customer to request a payment plan of more than 4 months or limit the authority of the department to order a payment plan of more than 4 months or a down payment of less than 25 per cent either on an individual basis or through revisions to its billing and termination regulations.

SECTION 62. The fourth paragraph of section 134 of said chapter 164, as so appearing, is hereby amended by striking out the last sentence.

SECTION 63. Said section 134 of said chapter 164, as so appearing, is hereby further amended by striking out, in lines 56 and 64, the words “standard offer” and inserting in place thereof, in each instance, the following word:- basic.

SECTION 64. Said section 134 of said chapter 164, as so appearing, is hereby further amended by striking out, in line 74, the words “standard offer” and inserting in place thereof the following words:- basic service.

SECTION 65. Said chapter 164 is hereby further amended by adding the following 6 sections:-

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

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

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

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

“Class II net metering facility”, a Solar-net-metering facility or wind-net-metering facility that has a generating capacity of more than 60 kilowatts and not more than 1 megawatt; provided however, that Class II net metering facility owned or operated by a customer which is a municipality or other governmental entity may have a generating capacity of more than 60 kilowatts and not more than 1 megawatt per unit.

“Class III net metering credit”, a credit equal to the excess kilowatt-hours by time of use billing period (if applicable) multiplied by the (i) distribution company’s default service kilowatt-hour charge in the ISO-NE load zone where the Customer is located, (ii) transmission kilowatt-hour charge, and (iii) transition kilowatt-hour charge. Notwithstanding the foregoing, in the case of a Customer which is a municipality or other governmental entity, the credit shall be equal to the excess kilowatt-hours multiplied by the sum of (i), (iii), and (iii), as set forth in the preceding sentence, and the distribution kilowatt-hour charge. This does not include the demand-side management and renewable energy kilowatt-hour charges set forth in sections 19 and 20 of chapter 25.

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

however, that Class III net metering facility owned or operated by a customer which is a municipality or other governmental entity may have a generating capacity of more than 1 megawatt but less than or equal to 2 megawatts per solar-net-metering or wind-net-metering unit.

“Customer”, a customer of a distribution company that is entitled to the net metering credits and includes the net metering facility itself.

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

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

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

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

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

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

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

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



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

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

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

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

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

(d) The distribution company shall have 1 or more tariffs, as approved or as may be approved from time to time by the department, regarding necessary interconnection studies and the type, costs, and timeframe for installing metering and distribution system upgrades to accommodate these installations. Such tariffs shall require that all facilities maintain adequate insurance as required under the tariffs. Distribution companies shall be prohibited from imposing special fees on Class I net metering facilities, such as backup charges and demand charges, or additional controls, or liability insurance, as long as the facility meets the other requirements of the interconnection tariff and all relevant safety and power quality standards.

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

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

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

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

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

(a) If the electricity generated by the neighborhood net metering facility during a billing period exceeds its kilowatt-hour usage during the billing period, the neighborhood net metering facility shall be billed for 0 kilowatt-hour usage and the excess neighborhood net metering credits shall be credited to those customers identified by the neighborhood net metering facility as being served by the same company to which the neighborhood net metering facility is interconnected, residing in the same neighborhood in which the neighborhood net metering facility is located, and have an ownership interest in the neighborhood net metering facility. The amount of the excess neighborhood net metering credits to be attributed to each such customer shall be determined by the allocation provided by the neighborhood net metering facility. Credits may be carried forward by such customers from month to month. Written notice of the identity of the customers so designated and the allocation of the credits to be attributed to such customers shall be in such form as the distribution company shall reasonably require.

(b) The department shall promulgate rules and regulations necessary to carry out this section, including, but not limited to, further definition of the term “neighborhood” and limitations on the number of customers that may be designated by neighborhood net metering facilities to receive neighborhood net metering credits.

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

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

Section 143. (a) For the purposes of this section, the term “small municipal renewable energy generating facility” shall have the following meaning:- a generating unit that is designed for or capable of operating at a gross capacity of less than 10 megawatts, and one which generates electricity using any of the following: (i) solar photovoltaic or solar thermal electric energy; (ii) wind energy; (iii) ocean thermal, wave, or tidal energy; (iv) landfill gas; (v) hydro power; or (vi) any other renewable energy generating technology as approved by the division of energy resources.

(b) Notwithstanding any general or special law to the contrary, a municipality may design, install, own and operate small municipal renewable energy generating facilities, sell any electricity generated from such facilities, and sell any other marketable products resulting from its generation of renewable energy at such facilities, including electronic certificates created to represent the

“generation attributes,” as such term is defined under 225 CMR 14.02, of each megawatt hour of energy generated by the renewable energy facilities; provided, however, that no later than 15 days after the initiation of a procurement of services, equipment or materials related to a small municipal renewable energy generating facility and again not later than fifteen days after the date that such small municipal renewable energy generating facility first produces electrical energy, said municipality shall submit a report to the department of public utilities and the division of energy resources detailing the costs of the small municipal renewable energy generating facility and the plan and a forecast for the disposition of the facility’s products. The division of energy resources shall annually issue a report containing information on small municipal renewable energy generating facilities, including the number, capacity, production, and performance of such facilities and recommendations, if any, for additional legislative action to increase the benefits available to municipalities through ownership of renewable energy generating facilities. The division shall submit such report to the joint committees on telecommunications, utilities and energy, and the house and senate committees on ways and means no later than April 30 of each year, including drafts of legislation to implement recommendations within such report.

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

(d) A municipality shall procure any services required for the design, installation, improvement, repair and operation of small municipal renewable energy generating facilities authorized under this section, and the acquisition of any equipment necessary in connection therewith, in accordance with the procurement requirements of chapter 30B of the General Laws, and the municipality may procure any such services and equipment together as one procurement or as separate procurements thereunder.

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

SECTION 66. The General Laws are hereby further amended by inserting after chapter 164A the following chapter:-

CHAPTER 164B  
REGULATION OF STEAM DISTRIBUTION COMPANIES

Section 1. The department shall have supervision of facilities operated by steam distribution companies for the sole purpose of ensuring public safety and shall establish reasonable rules and regulations pertaining to the construction and operation of steam distribution facilities and equipment used in manufacturing and transporting steam. The department shall keep itself informed as to the methods, practices, and condition of all facilities and equipment associated with the distribution of steam, including ducts and conduits, and shall make such examinations and investigations of the steam distribution system as necessary, including the adequacy of operation, maintenance and capital improvements to insure safe operation of facilities operated by a steam distribution company.

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

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

SECTION 67. Section 17B of chapter 271 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 4 and 5, the words "energy, as defined in paragraph (d) of section twelve of chapter one hundred and fifty-nine", and inserting in place thereof the following words:- cable or the department of public utilities.

SECTION 68. Section 22 of chapter 140 of the acts of 2005 is hereby amended by striking out the words "section 11C of chapter 25" and inserting in place thereof the following words:- section 11I of chapter 25A.

SECTION 69. Section 23 of said chapter 140 is hereby amended by striking out the words "section 11C of chapter 25" and inserting in place thereof the following words:- section 11I of chapter 25A.

SECTION 70. Section 1 of chapter 11 of the acts of 2006 is hereby amended by adding the following subsection:-

(o) Notwithstanding any general or special law to the contrary, local authorities may amend existing energy service agreements to bring products and services to additional buildings or assets in the community. The amendments may be accomplished through negotiation with the selected energy service provider.

SECTION 71. Commencing on July 1, 2008, and continuing for a period of 5 years thereafter, each distribution company, as defined in section 1 of chapter 164 of the General Laws, shall be required twice in that 5 year period to solicit proposals from renewable energy developers and, provided reasonable proposals have been received, enter into cost effective long-term contracts to facilitate the financing of renewable energy generation within the jurisdictional boundaries of the commonwealth including state waters, or in adjacent federal waters. Said distribution companies may also voluntarily solicit additional such proposals over the 5 year period. The timetable and method for solicitation and execution of such contracts shall be proposed by the distribution company in consultation with the division of energy resources and shall be subject to review and approval by the department. This long-term contracting obligation shall be separate and distinct from the electric distribution companies' obligation to meet applicable annual Renewable Portfolio Standard, hereinafter referred to as RPS requirements, set forth in section 11F of chapter 25A of the General Laws.

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

The department of public utilities and the division of energy resources each shall adopt regulations consistent with this section. The regulations shall: (a) allow renewable energy developers to submit proposals for long-term contracts conforming to the contracting methods specified in the second paragraph of this section; (b) require that any contracts executed by the distribution company under such proposals are filed with and approved by the department of public utilities before they become effective. As part of its approval process, the department of public utilities shall consider the recommendations of the office of the attorney general relevant to such contracts, which recommendations shall be submitted to the department within 45 days following the filing of such contracts with the department. The department of public utilities shall take into consideration both the potential costs and benefits of such contracts, and shall approve such contracts only upon a finding that they are a cost effective mechanism for procuring renewable energy on a long-term basis; (c) provide for an annual remuneration for the contracting distribution company equal to 4 percent of the annual payments under the contract to compensate said company for accepting the financial obligation of the long term contract, such provision to be acted upon by the department of public utilities at the time of contract approval; and (d) require that the renewable

energy generating source to be used by such developer under such proposal meet the following criteria: (i) have a commercial operation date, as verified by the division of energy resources, on or after January 1, 2008; (ii) be located within the jurisdictional boundaries of the commonwealth including state waters, or in adjacent federal waters; (iii) be qualified by the division of energy resources as eligible to participate in the Massachusetts RPS program, under section 11F of chapter 25A of the general laws, and to sell RECs under such program; (iv) be determined by the department to: (1) provide enhanced electricity reliability within the commonwealth; (2) contribute to moderating system peak load requirements; (3) be cost effective to Massachusetts electric rate payers over the term of the contract; and (4) where feasible, create additional employment in the Commonwealth.

The distribution company shall not be obligated to enter into long-term contracts under this section that would, in the aggregate, exceed 3 per cent of the total energy demand from all distribution customers of the distribution company in its service territory. As long as the electric distribution company has entered into long term contracts in compliance with this section, the electric distribution company shall not be required by regulation or order to enter into contracts with terms of more than three years in meeting its applicable annual renewable portfolio standard requirements set forth in section 11F of chapter 25A of the General Laws, unless the department finds that such contracts are in the best interest of customers, and provided further that the electric distribution company may execute such contracts voluntarily, subject to department of public utilities approval.

An electric distribution company may elect to use any energy purchased under such contracts for resale to its customers, and may elect to retain RECs for purpose of meeting its applicable annual renewable portfolio standard requirements set forth in section 11F of chapter 25A of the General Laws. If the energy and RECs are not so used, such companies shall sell such purchased energy into the wholesale spot market, and shall sell such purchased RECs through a competitive bid process. Notwithstanding the foregoing, the department shall conduct periodic reviews to determine the impact on the energy and REC markets of the disposition of energy and RECs hereunder, and may issue reports making recommendations for legislative changes if it determines that actions are being taken that will adversely affect the energy and REC markets.

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

In the event the RPS requirements of section 11F of chapter 25 should ever terminate, the obligation to continue periodic solicitations to enter into long-term contracts shall cease, provided that any contracts already executed and approved by the department of public utilities shall remain in full force and effect.

On or before July 1, 2010 and annually until the long term contracting requirement expires the division of energy resources shall assess whether the long-term contracting requirements set

forth in this section reasonably support the renewable energy goals of the commonwealth as set forth in section 11F of chapter 25A of the General Laws, and whether the alternative compliance rate established under said section 11F should be adjusted accordingly.

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

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

SECTION 72. The executive office of energy and environmental affairs shall, in conjunction with the department of public utilities implement a “energy pay and save”, hereinafter referred to as EPS pilot program, allowing electric utility customers to purchase and install renewable energy products in their residences or commercial facilities, by paying the cost of the system over time through an additional charge on the customer's electricity bill. The cost of the products purchased under the pilot program shall be added to the electric utility customer's utility bills, as a monthly EPS tariff, and shall be paid until the cost of purchase and installation of the products is paid off. The payment structure shall be implemented so that the charge on the electric utility customer's utility bill shall be less than the energy savings of that customer over the course of each given year. Non-payment by the owner of the EPS tariff shall result in disconnection, and a utility shall be entitled to recover the debt.

The pilot program shall be established with a minimum of 50 participants and a maximum of 200 participants. The maximum project size for the program shall be \$1,000 for commercial utility customers and \$500 for residential utility customers. Portable electrical cost measures shall not be funded. Quick pay options shall be investigated, allowing customers to have the option to pay off the entire balance of the amount financed on the first billing cycle. The program shall be funded from such sources as determined by the secretary and such funds shall be used to offset the cost of the program for the utilities, and as such payments for the purchases are paid to said utilities. The pilot program shall be implemented on or before June 1, 2008 and shall expire on December 31, 2008. The secretary and the department shall issue a final report, which shall include the results of its review and analysis, to the joint committee on telecommunications, utilities and energy, and the house and senate committees on ways and means on or before June 1, 2009.

SECTION 73. On or before September 1, 2008, each electric distribution company shall file a proposed plan with the department of public utilities to establish a 6 month pilot program for a “smart grid” that utilizes the electric delivery system, advanced (“smart”) meters, and other advanced technology to operate an integrated grid network communication system in a limited geographic area. Each smart grid pilot program shall include, but not be limited to advanced (“smart”) meters that provide real time measurement and communication of energy consumption, implementation of phone and e-mail notification systems to warn those customers of high prices so they can reduce their usage accordingly, automated load management systems embedded within current demand-side management programs and remote status detection and operation of

distribution system equipment. On or before September 1, 2008, each electric distribution company shall file a proposal with the department of public utilities to implement a 6 month pilot program that requires time of use or hourly pricing for commodity service for a minimum of 0.5 per cent of the company's customers. A specific objective of the pilot would be to reduce, for those customers who actively participate in the pilot, peak loads by a minimum of 5 per cent. The programs filed by the distribution company shall include proposals for rate treatment of incremental program costs; provided that such program costs may be deemed by the department to be a cost of basic service and recovered in rates charged for basic service. The department of public utilities shall review and approve or modify such plans on or before January 1, 2009. Plans which provide for larger numbers of customers and can show higher bill savings than outlined above would be eligible to earn incentives as outlined in an approved plan. Following the completion of the pilot programs, the secretary of energy and environmental affairs shall submit a report to the joint committee on telecommunications, utilities and energy no later than February 1, 2010 detailing the operation and results of such programs, including information concerning changes in consumer's energy use patterns, any identified disincentives to the deployment of smart grid systems throughout the Commonwealth, an assessment of the value of the program to both participants and non-participants, and recommendations concerning modification or expansion of the programs and further deployment and implementation.

SECTION 74. The department of public utilities shall direct all distribution companies, as defined in section 1F of chapter 164 of the General Laws, to submit a plan within 60 days of the effective date of this Act providing for retail access to competitive sellers of renewable energy generation attributes, whether or not bundled with electricity. The department shall approve or modify such plan after an opportunity for notice and comment by all interested persons; provided however, if a distribution company provides retail access to competitive sellers of renewable energy generation attributes prior to the effective date of this act, it shall not be required to file a plan under this section.

SECTION 75. There is hereby established a special commission to consist of 3 members of the senate, 1 of whom shall be the senate chair of the joint committee on telecommunications, utilities and energy who shall serve as co-chair of the commission, and 1 of whom shall be appointed by the Senate Minority Leader; and 3 members of the house of representatives, 1 of whom shall be the house chair for the joint committee on telecommunications, utilities and energy who shall serve as co-chair of the commission, and 1 of whom shall be appointed by the House Minority Leader; the commissioner of the division of energy resources or a designee, the secretary of energy and environmental affairs or a designee and 3 persons to be appointed by the governor, 1 of whom shall be a representative of the waste-to-energy industry, and 1 of whom shall be a representative of a consumer advocacy organization, for the purpose of making an investigation and study relative to the burning of commercial and demolition waste as it relates to the Massachusetts Renewable Energy Portfolio Standard Program, established by section 11F of chapter 25A of the General Laws. Said commission shall report the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect by filing the same with the clerks of the senate and the house of representatives on or before July 1, 2008.

SECTION 76. The department of public utilities shall establish a pilot program, hereinafter referred to as the HEAT Loan Program, to assist consumers with the purchase of energy efficient items for residential home modifications. For the purposes of this program, energy efficient items



shall include home insulation, new window installation, advanced programmable thermostats, micro-combined heat and power systems, fuel efficient furnaces, boilers, oil, gas, propane, or electric heating systems, solar domestic or fuel efficient hot water systems, materials for insulation or sealing of a duct, attic, basement, rim joint or wall and pipe insulation for heating systems or other retail items for use in a residential dwelling that increase the energy efficiency of said dwelling.

In establishing the program, the department shall develop a list of qualified state or federally chartered banking institutions or credit unions that do business in the commonwealth and that are governed by chapter 167 or 171 of the General Laws as participatory lending institutions. For the purposes of this section, a qualified lending institution shall include a lending institution, as described herein that is certified by the executive office and which shall offer zero and low interest loans for the purpose of enhancing the energy efficiency of a residential dwelling. The program shall be funded from that portion of the mandatory charge that is authorized by this section and allocated to residential customers consistent with section 19 of chapter 25 of the General Laws; provided, however, that not less than \$5,000,000 shall be made available to assist participating financial institutions in offering said loan products by or through interest rate write downs or other credit enhancement features; and provided, further, that loans offered under the program shall be offered to residential homeowners in the commonwealth solely for the purposes stated herein. The department shall make such loans available for purchases made on or after January 1, 2009, but not later than December 31, 2009. The department shall establish the rules and guidelines to carry out the purposes of this section, including, but not limited to, establishing applicant criteria, application forms and procedures, and energy efficiency product requirements and lending institution tracking and reporting requirements. The department shall submit a report detailing the rules and guidelines and the program results to the joint committee on telecommunications, utilities and energy not later than June 30, 2010.

SECTION 77. On or before January 1, 2011, the department of public utilities, in consultation with the division of energy resources, shall file a report on the effectiveness of the programs administered under section 19 of chapter 25 of the General Laws. Said report shall include a financial account of all funds incurred by and administered under the section, and any recommendations deemed appropriate by the department, including but not limited to the increase, reduction, or elimination of any mandatory charges authorized under section 19 of chapter 25 as they may relate to programs and plans under sections 21 and 22 of chapter 25 of the general laws; provided, however, that any recommendation for reduction or elimination should include a mechanism to ensure continued adequate funding for comprehensive low income demand-side management and education programs. Said report shall be filed with the house and senate clerks who shall forward the same to the house and senate committees on ways and means and the joint committee on telecommunications, utilities and energy.

SECTION 78. The department of public utilities shall hold a public hearing and issue a report, no later than July 1, 2008, relative to the replacement of meters for measuring electricity and gas to customers and the maintenance and improvements of gate boxes located in the streets, roads or sidewalks to be repaired by electric companies, gas companies and municipal lighting plants. The report shall include an evaluation of the frequency of replacements of meters and maintenance of gate boxes, the standards and practices employed by distribution companies and municipal lighting plants to determine when replacement of meters and maintenance of gate boxes is necessary, and rate impacts and cost benefit analysis of installing advanced metering technology.

The department shall report to the committees on ways and means and the joint committee on telecommunications, utilities and energy its recommendations and proposed legislation, if any.

SECTION 79. Notwithstanding any general or special law to the contrary, the division of energy resources shall make available monies from amounts collected through “Alternative compliance payments” established and administered under 225 CMR 14.00 promulgated under section 11F of chapter 25A, in the form of grants, or other financial incentives, for the following: (i) state colleges in the Commonwealth engaged in developing renewable energy generation projects, energy generation demonstration and educational programs, or applied engineering teaching tools pertaining to energy generation; (ii) Commonwealth based companies engaged in developing flywheel energy storage technologies; and (iii) to fund capital investments in new and existing generation units for the use of department of environmental protection approved Beneficial Use Determination paper derived fuels manufactured by Massachusetts corporations.

SECTION 80. Notwithstanding any provision of any general or special law to the contrary, when any political subdivision of the Commonwealth, including any city or town, any state or community college, any executive branch agency, department, board, bureau, office or commission, any state authority, or any other state public instrumentality created by an act of the General Court that plans any renewable energy project consistent with the goals established by Executive Order 484 dated April 18, 2007, and plans on commencing such project upon real estate owned or controlled by the Commonwealth or under the custody or control of the division of capital asset management, or of any state agency or authority, the proponent of the project and the Commonwealth, or applicable agency or authority, shall enter into a memorandum of understanding for a long-term lease agreement establishing the terms and conditions upon which such project may be built or implemented upon such real estate.

SECTION 81. The department of public utilities, in consultation with the division of energy resources, shall review and assess the effects of allowing electric and distribution companies to construct, own, or operate renewable generation facilities under subsection (f) of section 1A of chapter 164 of the General Law. This report shall be completed and filed with the joint committee on telecommunications, utilities, and energy, and the house and senate committees on ways and means, and the clerks of the senate and house of representatives not later than June 30, 2012. This report shall include any legislative and regulatory recommendations including but not limited to continuation, expansion, or elimination of any provisions of this program under subsection (f).

SECTION 82. The division of capital asset management and maintenance shall establish, not later than July 1, 2008, a methodology for use by agencies in assessing life-cycle costs that includes the requirements and assumptions set forth in subsections (a) and (b) of section 39D of chapter 7 of the General Laws.

SECTION 83. On or before December 31, 2008, the energy advisory council appointed under section 22 of chapter 25 of the general laws shall undertake, using third party experts, a study which examines the energy efficiency and demand response programs in the Commonwealth, including all public and private funding sources. The study shall include an audit of all existing energy efficiency and demand response programs to identify the costs and benefits associated with such programs.

SECTION 84. Not later than September 1, 2008, the department of public utilities shall establish terms and conditions under which a participating non-utility competitive supplier may be included in the program described in section 1D of chapter 164 of the general laws.

SECTION 85. Notwithstanding any general or special law to the contrary, the Massachusetts Technology Park Corporation shall, on or before July 1, 2008, submit to the house and senate committees on ways and means and the joint committees on telecommunications, utilities and energy and economic development and emerging technologies an update of the detailed plan described in paragraph (d) of section 4E of chapter 40J of the general laws setting forth a 5-year strategic plan for the Massachusetts Renewable Energy Trust Fund and its administration. Said strategic plan for the fund and its administration shall be developed in consultation with the oversight board described in paragraph (i) of said section 4E and shall contain said oversight board's comments.

SECTION 86. Section 45 shall take effect on June 30, 2012.

SECTION 87. Section 4 shall take effect 1 year from enactment of this act.

SECTION 88. Section 67 shall take effect as of April 10, 2007.

SECTION 89. Sections 36 and 37 shall be effective for tax years beginning on or after January 1, 2008 and before January 1, 2018.

SECTION 90. Subsection (m) as added by Section 41 shall take effect 6 months from enactment of this Act.