Acts (2008)

Chapter 169

AN ACT RELATIVE TO GREEN COMMUNITIES.

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

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

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

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

The division of operational services shall forward to the department of energy resources all requests for motor vehicle acquisitions by agencies of the commonwealth. The department of energy resources shall thereafter report to the division of operational services regarding the availability of a hybrid or alternative fuel vehicle that shall achieve the intended use designated by the requesting agency. The division of operational services, in consultation with the departments of energy resources and environmental protection, shall adopt a fuel efficiency standard for passenger vehicles owned or operated by the commonwealth.

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

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

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 includes 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:

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

(2) each new educational facility, including a 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;

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

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

(b) The division of capital asset management and maintenance or the state agency initiating the construction or renovation of a facility as described in 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 and associated 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 increase or decrease at a projected rate determined by the department of energy resources. 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 or at a rate determined by the department of energy resources.

(c) Notwithstanding sections 11C and 11I of chapter 25A or any regulations issued thereunder, 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. Said sections 11C and 11I 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 department of energy resources a report detailing the agency’s compliance with this section with respect to each such facility.

(f) The department 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 10 of the General Laws is hereby amended by inserting after section 35HH the following section:-

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

SECTION 4. 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) There shall be within the office of the attorney general, an office of ratepayer advocacy. The attorney general, through the office of ratepayer advocacy, may intervene, appear and participate in administrative, regulatory, or judicial proceedings on behalf of any group of consumers in connection with any matter involving rates, charges, prices and tariffs of an electric company, gas company, generator, transmission company, telephone company and telegraph company doing business in the commonwealth and subject to the jurisdiction of the department of public utilities or the department of telecommunications and cable. In addition, the attorney general may intervene, appear and participate in federal energy regulatory commission or other federal energy proceedings on behalf of ratepayers in the commonwealth.

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

For the purpose of such an intervention, appearance or participation, the attorney general may expend such funds as may be appropriated. These expenditures shall not exceed annually the amount assessed against such electric, gas, telephone and telegraph company under section 3 of chapter 24A, notwithstanding subsection (b). 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 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 the complexity of the proceeding. All reasonable and proper expenses, as defined in this section, shall be borne by the affected party in the proceeding and shall be paid by such party 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 party, recoverable through rates without further approval from the departments.

(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 subparts, 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 5. Chapter 13 of the General Laws is hereby amended by inserting after section 97 the following section:-

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

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

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

Section 21. The secretary, in conjunction with the secretary of administration and finance, shall design and implement a 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 section 1B of chapter 164. Any such competitive bid received shall include payment options with rates that remain uniform for a minimum period of 1 year. In lieu of designing and implementing a competitive bidding process as required by this section, the secretary may become a member of programs organized and administered by the Health and Educational Facilities Authority or its subsidiary organization for the purpose of such competitive group purchasing of electricity.

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

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

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

“Department”, department of environmental protection.

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

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

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

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

paid to that municipality by that owner in the year before implementation of RGGI; and provided further, that payments from the fund shall be prioritized so that the first payments from the fund shall be made to municipalities under this clause;

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

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

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

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

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

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

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

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

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

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

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

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

Section 5E. The department may, from time to time, audit all companies subject to its jurisdiction, except steam distribution companies. Such audits may include, but shall not be limited to, review of the following documents: (a) 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; (b) all documents concerning reconciling mechanisms related to rates, prices, charges, or costs and savings related to a merger, acquisition or consolidation within 3 years after the merger, acquisition or consolidation; and (c) documents concerning service quality measure statistics and service quality performance at least every 3 years or whenever service quality penalties equal to or exceed 50 per cent of the maximum.

Upon written complaint of the attorney general requesting an independent audit of a 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 10. 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. Each steam distribution company shall annually report by March 31 its intrastate operating revenues for the previous calendar year to the department. The assessments shall be apportioned according to each steam distribution company's intrastate operating revenues, to produce an annual amount not greater than $600,000, 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 receipt 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 11. Said chapter 25 is hereby further amended by striking out sections 19 and 20, as appearing in the 2006 Official Edition, and inserting in place thereof the following 4 sections:-

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 section 134 of chapter 164. In addition to the aforementioned mandatory charge, such programs shall also be funded, without further appropriation, by: (1) amounts generated by the distribution companies and municipal aggregators under the Forward Capacity Market program administered by ISO - NE, as defined in section 1 of chapter 164; and (2) cap and trade pollution control programs, including, but not limited to, and subject to section 22 of chapter 21A, not less than 80 per cent of amounts generated by the carbon dioxide allowance trading mechanism established under the Regional Greenhouse Gas Initiative Memorandum of Understanding, as defined in subsection (a) of section 22 of chapter 21A, and the NOx Allowance Trading Program; and (3) 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 private or public funds, 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, minimizing administrative costs to the fullest extent practicable 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 combined heat and power and geothermal heating and cooling projects. 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, minimizing administrative costs to the fullest extent practicable 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 subclass, 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. 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 program costs to ensure that a program is designed to obtain energy savings and system benefits with value greater than the costs of the program.

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

(b) Notwithstanding any general or special law to the contrary: (1) a municipal lighting plant which does not supply generation service outside its own 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 section; provided, however, that such an election by a municipal lighting plant shall be irrevocable and such a municipal lighting plant 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 subsection (a); and (2) in administering the Massachusetts Renewable Energy Trust Fund, the Massachusetts Technology Park Corporation, doing business as the Massachusetts Technology Collaborative, or the governing board, as applicable, shall not make any grant or loan or provide any subsidy from the trust fund to any municipal lighting plant or 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 first sentence of subsection (a) or clause (1); or (B) 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: (i) 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 (ii) 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 21. (a) To mitigate capacity and energy costs for all customers, the department shall ensure that, subject to subsection (c) of section 19, electric and natural gas resource needs shall first be met through all available energy efficiency and demand reduction resources that are cost effective or 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) Every 3 years, on or before April 30, the electric distribution companies and municipal aggregators with certified efficiency plans shall jointly prepare an electric efficiency investment plan and the natural gas distribution companies 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 or 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: (i) an assessment of the estimated lifetime cost, reliability and magnitude of all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply; (ii) 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; (iii) 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; (iv) a description of programs, which may include, but which shall not be limited to: (A) efficiency and load management programs; (B) demand response programs; (C) programs for research, development and commercialization of products or processes which are more energy-efficient than those generally available; (D) programs for development of markets for such products and processes, including recommendations for new appliance and product efficiency standards; (E) 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; (F) programs for the design, manufacture, commercialization and purchase of energy-efficient appliances and heating, air conditioning and lighting devices; (G) programs for planning and evaluation; (H) programs providing commercial, industrial and institutional customers with greater flexibility and control over demand side investments funded by the programs at their facilities; and (I) 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 (C) and (D) collectively, without authorization from the advisory council; (v) a proposed mechanism which provides performance incentives to the companies based on their success in meeting or exceeding the goals in the plan; (vi) the budget that is needed to support the programs; (vii) a fully reconciling funding mechanism which may include, but which shall not be limited to, the charge authorized by section 19; (viii) 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; and (ix) data showing the percentage of all monies collected that will be used for direct consumer benefit, such as incentives and technical assistance to carry the plan. With the approval of the council, the plan may also include a mechanism to prioritize projects that have substantial benefits in reducing peak load, reducing the energy consumption or costs of municipalities or other governmental bodies, or that have economic development, job creation or job retention benefits.

(3) 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 energy efficiency advisory 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.

(c) Each plan prepared under subsection (b) shall be submitted for approval and comment by the energy efficiency advisory council every 3 years on or before April 30. The electric and natural gas distribution companies 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 companies and municipal aggregators not later than 3 months after submission of the plan. The electric and natural gas distribution companies and municipal aggregators may make any changes or revisions to reflect the input of the council.

(d)(1) The electric and natural gas distribution companies 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 every 3 years on or before October 31. The department shall consider the plans and shall

provide an opportunity for interested parties to be heard in a public hearing.

(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 companies have identified and shall capture all energy efficiency and demand reduction resources that are cost effective or less expensive than supply and shall approve, modify and approve, or reject and require the resubmission of the plan accordingly. The department shall approve a fully reconciling funding mechanism for the approved plan and, in the case of municipal aggregators, a fully reconciling funding mechanism that requires coordination between the distribution company and municipal aggregator to ensure that program costs are collected, allocated and distributed in a cost effective, fair and equitable manner. The department shall determine the effectiveness of the plan on an annual basis.

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

(e) If an electric or natural gas distribution company or municipal aggregator has not reasonably complied with the plan, the department may open an investigation. In any such investigation, the utility company or aggregator shall have the burden of proof to show whether it had good cause for failing to reasonably comply with the plan. If the utility company or aggregator does not meet its burden, the department may levy a fine of not more than the product of $0.05 per kilowatt-hour or $1 per therm times the shortfall of kilowatt-hours saved or therms saved, as applicable, depending upon the facts and circumstances and degree of fault, which shall be paid to the Massachusetts Technology Park Corporation within 60 days after the end of the year in which the department levies the fine. The fine shall not impact ratepayers. The department of energy resources shall oversee the use of the funds held by the Massachusetts Technology Park Corporation under this subsection 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 11 members, including 1 person representing each of the following: (1) residential consumers, (2) the low-income weatherization and fuel assistance program network, (3) the environmental community, (4) businesses, including large C&I end-users, (5) the manufacturing industry, (6) energy efficiency experts, (7) organized labor, (8) the department of environmental protection, (9) the attorney general, (10) the executive office of housing and economic development, and (11) the department 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 member who is a representative of energy efficiency experts shall not have a contractual relationship with an electric or natural gas distribution company doing business in the commonwealth or any affiliate of such company, or any municipal aggregator. There shall be 1 non-voting, ex-officio member from each of the electric and natural gas distribution companies, 1 from each of the approved municipal aggregators, 1 from the heating oil industry and 1 from energy efficiency businesses.

(b) The council shall, as part of the approval process by the department, 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 shall, as part of its review of plans, 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 one fuel resource. Any costs for joint programs shall be allocated equitably among the efficiency programs.

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

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.

(d) The electric and natural gas distribution companies and municipal aggregators shall provide quarterly reports to the council on the implementation of their respective plans. The reports shall include a description of the program administrator’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. Chapter 25A of the General Laws, as so appearing, is hereby amended by striking out sections 1 to 3, inclusive, as amended by section 28 of chapter 19 of the acts of 2007, and inserting in place thereof the following 3 sections:-

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

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

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

The commissioner may, from time to time, subject to appropriation, establish within the department such administrative units as may be necessary for the efficient and economical administration of the department and, when necessary for such purpose, may abolish any such administrative unit, or may merge any 2 or more of them, as the commissioner deems advisable. The commissioner shall prepare and keep current a statement of the organization of the department, of the assignment of its functions to its various administrative units, offices and employees, and of the places at which and the methods whereby the public may receive information or make requests. Such statement shall be known as the department’s description of organization. A current copy of the description of organization shall be kept on file in the office of the secretary of state and in the office of the secretary of administration.

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

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

“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.

“Building authority”, the University of Massachusetts Building Authority , the State College Building Authority or any other building authority which may be established for similar purposes.

“Commissioner”, the commissioner of energy resources.

“Department”, the department of energy resources.

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

“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: (a) 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; (b) determines appropriate energy conservation maintenance and operating procedures; and (c) 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 the 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 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 weatherstripping; 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; on-site electrical generation equipment using new renewable generating sources as defined in section 11F; 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 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.

“Energy savings”, a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of energy conservation measures or projects; provided, however, 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.

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

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

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

“Non-renewable energy supply and resource development”, shall include but not be limited to gasoline, natural gas, coal, nuclear energy, offshore and onshore petroleum, 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.

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

“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.

“Qualified provider”, responsible and eligible person able to meet all requirements set forth in section 11C or 11I, and not barred 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.

“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.

“Responsible”, demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work required by a particular contract, based upon a determination of competent workmanship and financial soundness in accordance with section 11C or 11I 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”, any agency, authority, board, bureau, commission, committee, council, department, division, institution, officer or other agency of the commonwealth, including quasi-public agencies.

“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.

SECTION 13. Section 5 of said chapter 25A, as appearing in the 2006 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The commissioner shall file an annual report with the clerks of the senate and the house of representatives, the

joint committee on telecommunications, utilities and energy and the senate and house committees on ways and means: (a) listing the number of employees of the department of energy resources, the salaries and titles of each employee, the source of funding for the salaries of said employees and the projected date when federal funds for such positions are expected to terminate; (b) listing and describing grant programs of the department funded by the federal government, including the amount of funding by grant; (c) listing and describing other programs of the department, including the amount and source of funding by program; and (d) describing the energy audit, energy conservation and alternative energy bond programs by categories of projects, prospective grantees under each category, if known, and amounts to be spent by category and grantee.

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

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

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

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

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

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

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

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

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

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

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

(c) To qualify as a green community, a municipality or other local governmental body shall: (1) file an application with the division in a form and manner to be prescribed by the division; (2) provide for the as-of-right siting of renewable or alternative energy generating facilities, renewable or alternative energy research and development facilities, or renewable or alternative energy manufacturing facilities in designated locations; (3) adopt an expedited application and permitting process under which these energy facilities may be sited within the municipality and which shall not exceed 1 year from the date of initial application to the date of final approval; (4) establish an energy use baseline inventory for municipal buildings, vehicles and street and traffic lighting, and put in place a comprehensive program designed to reduce this baseline by 20 per cent within 5 years of initial participation in the program; (5) purchase only fuel-efficient vehicles for municipal use whenever such vehicles are commercially available and practicable; and (6) require all new residential construction over 3,000 square feet and all new commercial and industrial real estate construction to minimize, to the extent feasible, the life-cycle cost of the facility by utilizing energy efficiency, water conservation and other renewable or alternative energy technologies. The secretary may waive these requirements based on a written finding that due to unusual circumstances, a municipality cannot reasonably meet all of the requirements and the municipality has committed to alternative measures that advance the purposes of the green communities program as effectively as adherence to the requirements.

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

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

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

Section 10A. The division shall design and implement a competitive bidding procedure for the procurement of electric generation from renewable and alternative generating facilities on behalf of municipalities certified as green communities under section 10. Any competitive bids received shall include payment options with rates that remain uniform for a minimum of 5 years. In lieu of designing and implementing a competitive bidding process as required by this section, the director may become a member of programs organized and administered by the Health and Educational Facilities Authority or its subsidiary organization for the purpose of such competitive group purchasing of electricity.

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

Section 11C. (a) A state agency or building authority may, in the manner provided by this section, contract for the procurement of energy management services. Such contracts may include terms of not more than 20 years. The state agency or building authority shall solicit competitive sealed proposals through a request for proposals. At least 1 week prior to soliciting proposals for a contract under this section, the agency or authority shall notify the commissioner in writing, in such form and including such information as the commissioner shall prescribe by regulation, of the intent to solicit proposals. Such notification shall, at a minimum, include a complete copy of the request for proposals. An acknowledgment of receipt, in such form and including such information as the commissioner shall prescribe by regulation, shall be issued to the state agency or building authority 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, except a quasi-public agency, 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 the division has given prior written approval, and no contract for energy management services shall be valid unless approved and signed by that commissioner. A quasi-public agency may develop a request for proposal and enter into a contract for energy management services independently. The commissioner of capital asset management and maintenance may delegate to state agencies and building authorities the authority to enter into such contracts with an estimated construction cost of less than $1 million. The delegation shall be in writing from the commissioner to the using agency or building authority.

The request for proposals published by a state agency or building authority shall include: (1) the time and date for receipt of proposals and the address of the office to which the proposals shall be delivered; (2) 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 (3) proposed contract terms and conditions and an identification of such terms and conditions which shall be deemed mandatory and non-negotiable. The request for proposals may incorporate documents by reference, provided that the request for proposals specifies where prospective offerors may obtain the documents. The state agency or building authority 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.

Sections 44A, 44B and 44E through 44H, inclusive, of chapter 149 shall not apply to contracts procured under this section. Section 44D of chapter 149 shall apply as appropriate to proposals submitted for contracts under this section, and every such proposal shall be accompanied by: (1) a copy of a certificate of eligibility issued by the commissioner of the division of capital asset management and maintenance; and (2) 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 that division. If the state agency or building authority determines that any offeror is not responsible or eligible, the agency or authority shall reject the offeror, and shall 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.

(b) A local governmental body may, in the manner provided in this subsection, contract for the procurement of energy management services. Unless no other manner of description suffices, and the local 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 local governmental body's authority to reject, in whole or in part, any and all proposals, as provided in this section, a local governmental body shall unconditionally accept a proposal without alteration 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 local governmental body or fair competition. The local governmental body shall waive minor informalities or allow the offeror to correct them. If a mistake and the intended meaning of the proposal are clearly evident on the face of the proposal document, the local governmental body shall correct the mistake to reflect the intended meaning 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 meaning is not similarly evident.

The local 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 local governmental body shall evaluate responsiveness, responsibility, qualifications of the offeror, technical merit and cost to the local governmental body. The request for proposals shall specify the method for comparing proposals to determine the proposal offering the lowest overall cost to the local governmental body, taking into consideration comprehensiveness of services, energy or water cost savings,

costs to be paid by the local governmental body, and revenues to be paid to the local governmental body. If the local 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 revisions, if needed, to each proposal which should be obtained by negotiation before the contract shall be awarded to the offeror of the proposal. The local 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.

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

The commissioner, in consultation with the commissioner of capital asset management and maintenance, shall adopt regulations for the procurement of energy management services under this section for local government bodies. The commissioner of capital asset management and maintenance shall adopt regulations for services to be procured for state agencies and building authorities, and shall adopt regulations, in consultation with the director of housing and community development, for the operations of housing authorities. Such regulations may limit the scope of services procured and the duration of contracts, and shall include any requirements that the commissioner or the commissioner 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 commissioner or the commissioner of capital asset management and maintenance may deem necessary to monitor the costs and benefits of contracts for energy management services.

(d) The commissioner shall enforce the requirements of this section and regulations adopted hereunder as they relate to local governmental bodies and shall have all the necessary powers to require compliance. The commissioner of capital asset management and maintenance shall enforce all such regulations as they relate to state agencies and building authorities, except quasi-public agencies. An order of the commissioner 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 therefrom. The superior court for Suffolk county shall have jurisdiction over appeals of orders of the commissioner 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 an order of the commissioner is invalid. An aggrieved person shall not be required to seek an order from the commissioner as a condition precedent to seeking any other remedy.

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

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

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

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

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

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

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

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

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

Section 11F. (a) The department 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: (1) an additional 1 per cent of sales by December 31, 2003 , or 1 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; (2) an additional one-half of 1 per cent of sales each year thereafter until December 31, 2009 ; and (3) 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, 2009 , such minimum percentage requirement shall be known as the “Class I” renewable energy generating source requirement.

(b) For the purposes of this subsection, a renewable energy generating source is one which generates electricity using any of the following: (1) solar photovoltaic or solar thermal electric energy; (2) wind energy; (3) ocean thermal, wave or tidal energy; (4) fuel cells utilizing renewable fuels; (5) landfill gas; (6)

waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (7) naturally flowing water and hydroelectric; (8) low emission advanced biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae; or (9) geothermal energy; provided, however, that the calculation of a percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable generating sources shall exclude clauses (6) and (7). The department 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, as defined in section 1 of chapter 164, control area if the output is verified by an independent verification system participating in the New England Power Pool Generation Information System, in this section called NEPOOL GIS , accounting system and approved by the department.

(c) New renewable energy generating sources meeting the requirements of this subsection shall be known as Class I renewable energy generating sources. For the purposes of this subsection, a Class I renewable energy generating source is one that began commercial operation after December 31, 1997, or represents 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: (1) solar photovoltaic or solar thermal electric energy; (2) wind energy; (3) ocean thermal, wave or tidal energy; (4) fuel cells utilizing renewable fuels; (5) landfill gas; (6) energy generated by new hydroelectric facilities, or incremental new energy from increased capacity or efficiency improvements at existing hydroelectric facilities; provided, however, that (i) each such new facility or increased capacity or efficiency at each such existing facility must meet appropriate and site-specific standards that address adequate and healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities in the impacted watershed as determined by the department in consultation with relevant state and federal agencies having oversight and jurisdiction over hydropower facilities; (ii) only energy from new facilities having a capacity up to 25 megawatts or attributable to improvements that incrementally increase capacity or efficiency by up to 25 megawatts at an existing hydroelectric facility shall qualify; and (iii) no such facility shall involve pumped storage of water or construction of any new dam or water diversion structure constructed later than January 1, 1998; (7) low emission advanced biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae; (8) marine or hydrokinetic energy as defined in section 3; or (9) geothermal energy. A Class I renewable generating source may be located behind the customer meter within the ISO -NE control area if the output is verified by an independent verification system participating in the NEPOOL GIS accounting system and approved by the department.

(d) 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 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: (1) solar photovoltaic or solar thermal electric energy; (2) wind energy; (3) ocean thermal, wave or tidal energy; (4) fuel cells utilizing renewable fuels; (5) landfill gas; (6) energy generated by existing hydroelectric facilities, provided that such existing facility shall meet

appropriate and site-specific standards that address adequate and healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities in the impacted watershed as determined by the department in consultation with relevant state and federal agencies having oversight and jurisdiction over hydropower facilities; and provided further, that only energy from existing facilities up to 5 megawatts shall be considered renewable energy and no such facility shall involve pumped storage of water nor construction of any new dam or water diversion structure constructed later than January 1, 1998; (7) waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (8) low emission advanced biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae; (9) marine or hydrokinetic energy as defined in section 3; or (10) geothermal energy. A facility in clause (7) shall not be a Class II renewable generating source unless it operates or contracts for one or more recycling programs approved by the department of environmental protection. At least 50 per cent of any revenue received by the facility through the sale of Massachusetts RPS-eligible renewable energy certificates shall be allocated to such recycling programs. 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 department.

(e) Every retail supplier shall annually provide to end-use customers in the commonwealth generation attributes from Class II energy facilities in an amount approved by the department; provided, however, that the department shall specify that a certain percentage of these requirements shall 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 department as necessary to promote the continued operation of existing energy generating resources that meet the requirements of said 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 department 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 department 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 department for Class I and Class II renewable energy generating sources. The department shall establish and maintain regulations outlining procedures by which each retail supplier shall annually submit for the department’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 department. The portion of the required minimum percentage required to be supplied by such on-site renewable energy generating sources shall be established by the department; provided, however, that the department may specify that a certain percentage of these requirements shall be met through energy generated from a specific technology or fuel type.

(h) The department shall adopt 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 department; provided, however, that the department shall set on-site generation alternative compliance payment rates at levels that shall stimulate the development of new on-site renewable energy generating sources.

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

Section 11F1/2. (a) The department shall establish an alternative energy portfolio standard for all retail electricity suppliers selling electricity to end-use customers in the commonwealth. 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 department, to end-use customers in the commonwealth from alternative energy generating sources and the department 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: (1) gasification with capture and permanent sequestration of carbon dioxide; provided, however, that the fuel shall be purchased by, and contractually transported to, the alternative energy generating source in ISO -NE, as defined in section 1 of chapter 164; (2) combined heat and power; (3) flywheel energy storage; (4) 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; (5) energy efficient steam technology; or (6) any other alternative energy technology approved by the department 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 gasification; petroleum coke, except when used in gasification; oil; natural gas, except when used in gasification or combined heat and power; and nuclear power.

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

(c) The department shall adopt 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 department. Such regulations shall outline procedures by which each retail supplier shall annually submit for the

department's review a filing illustrating the retail supplier's compliance with the requirements of this section.

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

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

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

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

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

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

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

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

(c) Before entering into an energy management services contract, a state agency, local governmental body or building authority 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 an energy management services contract, an agency, body or authority body shall notify the commissioner in writing, in a form and including information as the commissioner of capital asset management and maintenance shall prescribe by regulation, of the entity's intent to solicit qualifications. The notification, at a minimum, shall include a copy of the request for qualifications. An acknowledgment of receipt, in a form and including information as the commissioner of capital asset management and maintenance shall prescribe by regulation, shall be issued by the commissioner to the agency, body or authority upon compliance with the requirements of this subsection.

The request for qualifications published by a state agency, local governmental body or building authority shall include the following: (1) the name and address of the agency, body or authority; (2) The name, address, title and phone number of a contact person; (3) the date, time and place where qualifications shall be received; (4) 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; (5) the evaluation criteria for assessing the qualifications; (6) a statement that the agency, body or authority may cancel the request

for qualifications, or may reject in whole or in part any and all energy savings measures, when it determines that cancellation or rejection serves the best interests of the public; and (7) any other stipulations and clarifications the agency, body or authority may require, which shall be clearly identified in the request for qualifications.

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, 44B and 44E to 44H, inclusive, of 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 capital asset management and maintenance, and (2) by an update statement.

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

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

(2) the certificate of eligibility and update statement provided by the qualified providers;

(3) quality of the products proposed;

(4) methodology of determining energy savings;

(5) general reputation and performance capabilities of the qualified providers;

(6) substantial conformity with the specifications and other conditions set forth in the request for qualifications;

(7) time specified in the qualifications for the performance of the contract; and

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

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

(e) The state agency, local governmental body or building authority shall negotiate a contract with the most qualified person at compensation which it determines is fair, competitive and reasonable. If the agency, body or authority is unable to negotiate a satisfactory contract with the person considered to be the most qualified at a price the agency, body or authority determines to be fair, competitive and reasonable, negotiations with that person shall be formally terminated. The agency, body or authority shall then undertake negotiations with the second most qualified person. Failing accord with the second most qualified person, the agency, body or authority shall terminate those negotiations and then undertake negotiations with the third most qualified person. Should the agency, body or authority be unable to negotiate a satisfactory contract with any of the selected persons, it 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 agency, body or authority cancels the request for qualifications.

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

(g) The state agency, local governmental body or building authority shall provide public notice of the meeting at which it proposes to award the energy management services 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 agency, body or authority shall promptly publish in the central register notice of the award and shall notify the commissioner of the award and provide to him a copy of the energy management services contract.

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

(i) The commissioner, in consultation with the commissioner of capital asset management and maintenance, shall adopt regulations for the procurement of energy management services under this section for local government bodies. The commissioner shall enforce the requirements of this section and regulations adopted as they relate to local governmental bodies and shall have all the necessary powers to require compliance. The commissioner of capital asset management and maintenance shall adopt regulations for services to be procured for state agencies and building authorities. The commissioner of capital asset management and maintenance shall enforce the regulations as they relate to state agencies and building authorities. An order of the commissioner under this subsection shall be effective and may be enforced according to its terms, and enforcement 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 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 an order of the commissioner is invalid. An aggrieved person shall not be required to seek and order from the commission as a condition precedent to seeking any other remedy.

(j) 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.

(k) Unless no other manner of description suffices, and the state agency, local governmental body or building authority 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.

(l) Before entering into a energy management services contract, the state agency, local governmental body or building authority shall require the qualified provider to file with the agency, body or authority 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a)(2) A governing board of not less than 9 individuals with an interest in matters relating to the general purpose of the fund shall assist the corporation in matters related to the fund and in the implementation of this section. The governing board shall include: the commissioner of energy resources, who shall serve as chair; the secretary of energy and environmental affairs or a designee, the secretary of housing and economic development or a designee; the secretary of administration and finance or a designee; 1 member of the board to be appointed by the chair of the board; and 4 members to be appointed by the governor, who shall have knowledge and experience in the following areas: electricity distribution, generation, supply or power marketing; the concerns of commercial and industrial ratepayers; the concerns of residential ratepayers, including low-income ratepayers; economics, financial or investment consulting 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 alternative energy and energy efficiency issues. The members of the governing board shall be deemed to be directors for the purposes of the fourth paragraph of section 3. Each appointed member of the governing board shall serve for a term of 3 years and thereafter until such member’s successor is appointed, and shall be eligible for reappointment. A person appointed to fill a vacancy on the governing board shall be appointed in a like manner as the vacating member shall have been appointed and shall be eligible for reappointment. A member of the governing board appointed by the governor may be removed by the governor for cause. The members of the governing board shall serve without compensation, but each member shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties. The governing board may meet as often as the members shall decide; provided, however, that it shall meet at least quarterly. The governing board may, by

majority vote, delegate any amount of its authority to an executive committee comprised of members of the governing board, the board or the staff of the corporation. Any such delegation of authority may be revoked at any time by majority vote of the governing board.

The governing board shall adopt and submit to the board for approval detailed 5-year strategic plans and annual operational plans for the application of the fund in support of the design, implementation, evaluation and assessment of renewable energy programs for the commonwealth that ensure that the fund shall be employed to provide financial and non-financial resources to overcome barriers facing renewable energy enterprises, institutions and projects in a prudent manner consistent with the public purposes and interests set forth in this section. The strategic plan shall include consideration of, and be consistent with, plans, regulations and policies issued by the executive office of energy and environmental affairs and, to the extent practicable, shall consist of at least 4 components: (i) product and market development to establish a foundation for growth and expansion of the commonwealth's renewable energy enterprises, institutions and projects, including pilot and demonstration projects, production incentives, and other activities designed to increase the use and affordability of renewable energy in the commonwealth; (ii) training and public information to allow for the development and dissemination of complete, objective and timely information, analysis and policy recommendations related to the advancement of the public purposes and interests of the renewable energy fund; (iii) investment to support the growth and expansion of renewable energy enterprises, institutions and projects; and (iv) research and development within the commonwealth and the New England region related to renewable energy matters. The strategic plans and annual operational plans shall also allocate a portion of the fund to the green communities program to provide technical assistance to municipalities certified as green communities under section 10 of chapter 25A. The strategic plans and annual operational plans shall provide detailed budget and staffing levels and specify the expenditure of such monies from the fund to each of these component activities; provided, however, that monies so expended shall be used to develop such renewable energy projects with priority given to projects, institutions, and enterprises, first, within the commonwealth; next, to such activities within New York and the New England region which serve the regional power grid; and finally, all other such activities regardless of location. In developing the strategic plans and yearly operational plans, the governing board shall consult with and utilize the services of the department of public utilities and the department of energy resources for such technical assistance as the governing board deems necessary or appropriate to the effective discharge of the governing board's responsibilities and duties relative to the fund.

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

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

(c) Public interests to be advanced through the governing board's actions shall include, but not be limited to, the following: (i) the development and increased use and affordability of renewable energy resources in the commonwealth and the New England region; (ii) the protection of the environment and the health of the citizens of the commonwealth through the prevention, mitigation and alleviation of the adverse pollution effects associated with certain electricity generation facilities; (iii) the maximization of benefits to consumers of the commonwealth resulting from increased fuel and supply diversity; (iv) the creation of additional employment opportunities in the commonwealth through the development of renewable technologies; (v) the stimulation of increased public and private sector investment in, and competitive advantage for, renewable energy and related enterprises, institutions and projects in the commonwealth and the New England region; and (vi) the stimulation of entrepreneurial activities in these and related enterprises, institutions and projects.

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

(e) Subject to the approval of the board, and not inconsistent with any strategic or annual operational plans, investment activity of monies from the fund may consist of the following: (i) an equity fund, to provide risk capital to renewable energy enterprises, institutions and projects; (ii) a debt fund, to provide loans to energy enterprises, institutions, projects, intermediaries and end-users; and (iii) a market growth assistance fund, to be used to attract private capital to the equity and debt funds. To implement these investment activities, the corporation may retain, through a bid process, public or private sector investment fund managers, who shall have prior knowledge and experience in fund management and possess related skills in renewable energy and related technologies development, to direct the investment activity described in this section and to seek other fund co-sponsors to contribute public and private capital from the commonwealth and other states; provided, however, that such capital shall be appropriately segregated. The managers, subject to the approval of the board, may retain necessary services and consultants to carry out the purposes of the fund. The managers shall develop a business plan to guide investment decisions, which shall be approved by the board before any expenditures from the trust fund and which shall be consistent with the provisions of the plan for the fund as adopted by the board.

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

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

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

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

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

(l) Notwithstanding any general or special law to the contrary, including without limitation any laws related to the procurement of electricity, the board shall, upon the written request of the governor, transfer moneys in the fund, in an amount not exceeding $17 million in the aggregate, to the commonwealth for deposit in the General Fund. As a condition subsequent to any such transfer, the commonwealth, acting by and through the department of energy resources or a successor agency, shall enter into an agreement with the corporation under which the commonwealth, at the direction of the corporation, shall enter into contracts, for terms not to exceed 20 years, with owners of facilities that generate electricity using renewable energy technologies, wholesale power marketers or other market intermediaries selling such electricity, for the purchase by the commonwealth, for its own use or for the use of any municipal electric department, public instrumentality or other governmental or nongovernmental entity in the commonwealth, of electricity produced by renewable energy technologies. The corporation shall determine the particular types of technologies which shall be the subject of any such contract based on such criteria as it shall deem advisable, including without limitation retail consumer choices of such renewable energy technologies. The aggregate dollar amount of the green power premium associated with electricity purchases to be made by the commonwealth for its own use under such contracts shall have a present value, determined according to such discount rate as shall be mutually agreeable to the corporation and the commonwealth, of such amount as shall be transferred under the first sentence of this paragraph. The green power premium shall be determined by subtracting from the total amount of the purchase price the undifferentiated commodity price for electricity under then-current commonwealth contracts. The maximum payment in any 1 fiscal year under all such contracts shall not exceed $5 million. The commonwealth shall be indemnified under such contracts by the owners or power marketers on such terms as the corporation shall deem commercially reasonable. The amounts collected under section 20 of chapter 25 shall be impressed with a trust for the benefit of the fund. To facilitate the purchase by the corporation of electricity produced by renewable energy technologies or of certificates produced under the renewable energy portfolio standard regulations of the department of energy resources representing the generation attributes of electrical energy produced by renewable energy technologies, and in consideration of the sale of such electricity or certificates, the commonwealth shall covenant with the sellers of such electricity or certificates that the amounts collected under said section 20 shall not be diverted from the fund and that the rates of the mandatory charges under said section 20 shall not be reduced during the term, which shall not exceed 20 years, of any contract entered into by the corporation for the purchase of such electricity or certificates below a level which shall enable the corporation to fulfill the terms of such contracts. In furtherance of the public purposes of the fund, income derived from the investment of amounts collected under said section 20 shall be expended by the corporation

as provided in subsection (a) and, in the discretion of the corporation, in furtherance of the public purposes of the corporation and for such costs of departments and agencies that support or are otherwise consistent with the purposes of the fund.

SECTION 50. 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 51. Section 1 of chapter 90 of the General Laws, as amended by section 1 of chapter 79 of the acts of 2008, is hereby further amended by inserting before the definition of “Ambulance” the following 2 definitions:-

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

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

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

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

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

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

(e) when operating on petroleum fuel, the vehicle model's miles per gallon rating from the United States Environmental Protection Agency exceeds the agency's corporate average fuel economy requirement for the class of vehicles, whether cars or light trucks, in which the vehicle model is classified. The model specification shall include characteristics that affect fuel economy and for which the United States Environmental Protection Agency issues distinct miles per gallon ratings, such as transmission type and engine size.

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

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

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

SECTION 54. 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 (p) of section 94.

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

(o) To adopt and fully integrate the latest International Energy Conservation Code as part of the state building code, together with any more stringent energy-efficiency provisions that the board, in consultation with the department 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 International Energy Conservation Code.

(p) In consultation with the department 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.

(q) In consultation with the department of energy resources, to develop requirements and promulgate regulations as part of the state building code, in addition to the requirements of the latest International Energy Conservation Code, 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 such buildings 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.

(r) In consultation with the department 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 56. 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 57. 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. In this chapter, unless the context otherwise requires, the following words shall 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 shall not be limited to, solar energy, wind, wood, alcohol, hydroelectric, biomass energy systems, renewable non-depletable and recyclable energy sources.

“Alternative energy producer”, a person, firm, partnership, association, public or private corporation, or an 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 existed before March 1, 1982 , and in which there existed as of said date electrical generating capacity of more than 15 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 which shall include the following services: (1) reactive power or 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 after October 1, 1973 ; (ii) an agreement of association, special act of incorporation and other charter documents, including by-law provisions and stockholder votes in effect before October 1, 1973 , which, after that date, would be included in articles of organization, and all amendments thereto, effective before 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 of and the retail customer’s 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 30 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 as its primary energy source, except that 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 as its primary energy source; provided, however, that 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 existed before March 1, 1982 and, in which park there existed, as of said date, electrical generating capacity of more than 15 megawatts, and in which there existed, since said date, a cogeneration facility 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 3.

“Default Service”, the electricity services provided to a retail customer upon: (i) the 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) 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, that a distribution company shall not include any entity which owns or operates plant or equipment used to produce electricity, steam and chilled water, or an 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 before January 1, 1986 .

“Distribution facility”, a 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 for selling, transmitting, distributing, transmitting and selling, or distributing and selling, 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; provided further, that a distribution

company shall not include an entity which owns or operates a plant or equipment used to produce electricity, steam and chilled water, or an 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 a 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 shall not be limited to, the modification of or change in the operation of real or personal property in a manner likely to improve the efficiency of energy use, 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 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 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 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”, a 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”, a building, 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 1 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 for 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; provided, however, that mitigation shall, in accordance with 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 the 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 shall not be limited to, gasoline, natural gas, coal, nuclear energy, offshore and onshore petroleum 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”, fuels used, except during periods of maintenance or repair, for the generation of electric energy; provided, however, that primary energy source shall 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”, (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 using such fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae; provided, however, that renewable energy supplies shall not include coal, oil, natural gas except when used in fuel cells, and nuclear power.

“Reseller”, a 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”, a person, firm, partnership, association or private corporation organized or operating under the laws of the commonwealth with the primary purpose of operating a plant, 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 include: (i) an entity producing or distributing steam exclusively on private property and solely for use by the entity or the entity's tenant, and not for distribution or sale; or (ii) a company that produces and sells steam as a by-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”, a 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; provided, however, that 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 federal law and regulation.

“Transmission facility”, plant or equipment used for the transmission of electricity, as determined by the FERC 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 1 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 his or their own benefit.

“Wholesaler”, a 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 58. Said section 1A of said chapter 164, as appearing in the 2006 Official Edition, is hereby amended by adding the following subsection:-

(f) Neither this section nor sections 1B to 1H, inclusive, shall preclude an electric company or a distribution company from constructing, owning and operating generation facilities that produce solar energy; provided, however, that such company shall not own or operate more than 25 megawatts of such facilities before January 1, 2009 , and 50 megawatts of such a facility after January 1, 2010 . No electric company or distribution company may recover costs associated with the construction of a generating facility producing solar energy without obtaining prior approval for the costs from the department. Upon the filing by an electric company or a distribution company of a petition for pre-approval of cost recovery for a solar energy generating facility, the department shall determine whether the proposal is consistent with the commonwealth's energy policy and could be used to satisfy, in part, the renewable energy portfolio standard requirements set forth in section 11F of chapter 25A. The department shall issue an order within 6 months after 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 59. Subsection (f) of section 1A of chapter 164 of the General Laws is hereby repealed.

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

Residential or small commercial customers: (a) initiating new utility service; (b) reinstating service following a change of residence or business location; (c) making an inquiry regarding their rates; or (d) 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 in learning 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.

Participating non-utility competitive suppliers of energy may list qualifying electric offers to provide electric generation service to residential and small commercial customers in each customer’s utility bill. The department shall determine the manner such information is presented in customers’ utility bills.

For electric suppliers who have chosen the complete billing method, the electric distribution company shall make timely payments to such suppliers in accordance with this paragraph. The distribution company shall: (a) bill all of the electric supplier’s customers in a service class according to complete billing; (b) pay such suppliers the full amounts due from customers for generation services in a time period consistent with the average payment period of the participating class of customer, less a percentage of such amounts that

reflects the average of the uncollectible bills for the participating customer classes of the electric distribution company and other reasonable development, operating or carrying costs incurred, as approved by the department.

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

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

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

SECTION 64. 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 and method of obtaining low-income discount rates. An existing residential customer eligible for a low-income discount on the date of the 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 65. 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 66. 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 brokering and other energy-related services by a municipal lighting plant cooperative to retail customers without any accompanying sale of electricity to such retail customers shall not constitute the supply of generation services by its members for the purposes of subsection (b) of section 47A.

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

SECTION 68. 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 69. Said chapter 164 is hereby further amended by striking out section 96, as so appearing, and inserting in place thereof the following section:-

Section 96. Companies, except steam distribution 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 if 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; provided, however, that in making such a determination the department shall at a minimum consider: proposed rate changes, if any; the long term strategies that will assure a reliable, cost effective energy delivery system; any anticipated interruptions in service; or other factors which may negatively impact customer service; and provided further, that the purchase or sale of properties by, or the consolidation or merger of, wholesale generation companies shall not require departmental approval.

SECTION 70. 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 71. 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 72. 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 73. Said section 116 of said chapter 164, as so appearing, is hereby further amended by adding the following sentence:- A gas or electric company may 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 74. Section 134 of said chapter 164, as so appearing, is hereby amended by striking out, in lines 31, 51 and 75, the word “division” and inserting in place thereof, in each instance, the following word:- department.

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

SECTION 76. 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 77. 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 78. 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:-

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

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

“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; provided, however, that this shall not include the demand side management and renewable energy kilowatt-hour charges set forth in sections 19 and 20 of chapter 25; and provided further, that credit for a Class I net metering facility not using solar or wind as its energy source shall be the average monthly clearing price at the ISO -NE.

“Class I net metering facility”, a 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; and (iv) transition kilowatt-hour charge; provided, however, that this shall 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”, an agricultural net metering facility, solar net metering facility, or wind net metering facility with a generating capacity of more than 60 kilowatts but less than or equal to 1 megawatt; provided, however, that a 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 but less than or equal to 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 sum of the distribution company’s: (i) 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; provided, however, that if a customer is a municipality or other governmental entity, the credit shall be equal to the excess kilowatt-hours multiplied by the sum of (i), (ii) and (iii) and the distribution kilowatt-hour charge; and provided further, that this shall 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”, an agricultural net metering facility, solar net metering facility, 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 a 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, including net metering facilities.

“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 sum of the distribution company’s: (i) 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; provided, however, that 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: (i) is owned by, or serves the energy needs of, a group of 10 or more residential customers that resides in a single neighborhood and is served by a single distribution company; and (ii) 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.

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

“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 customers of the same distribution company to which the Class I or Class II wind or solar net metering facility is interconnected and that are 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 identities 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 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 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 customers of the same distribution company to which the Class III net metering facility is interconnected and that 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 identities 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. A distribution company may elect not to allocate such credits and instead may purchase net metering credits from the facility at the rates provided for in this subsection.

(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 impose tariffs, 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. 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.

Before 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 or net metering customer 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 adopt 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 having 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 adopt rules and regulations necessary to carry out this section, including, but not limited to, further defining the term “neighborhood” and limiting 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 the impact of 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 mean a generating unit that is designed for, or capable of, operating at a gross capacity of less than 10 megawatts and that qualifies as a Class I renewable energy generating source under section 11F of chapter 25A.

(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 defined in 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 no later than 15 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 department of energy resources detailing the costs of the small municipal renewable energy generating facility and a plan and forecast for the disposition of the facility’s products. The department 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 department of energy resources shall submit such report, including drafts of

legislation to implement recommendations within such report, to the joint committee on telecommunications, utilities and energy and the senate and house committees on ways and means not later than April 30 of each year.

(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 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 practicable 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 after the anticipated date of commencement of the 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 section shall not be included in determining the limit of indebtedness of a municipality under section 10 of said chapter 44 but, except as otherwise provided in this subsection, 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 acquire any equipment necessary in connection therewith, in accordance with the procurement requirements of chapter 30B as applicable. A municipality may procure any such services and equipment together as 1 procurement or as separate procurements thereunder.

(e) A municipality may establish an enterprise fund under section 53F1/2 of chapter 44 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 therefor. Such receipts shall be used to pay the costs of operation and maintenance of the small municipal renewable energy generating facilities, to pay the costs of future improvements and repairs thereto and to pay the principals and interest on any bonds or notes issued therefor.

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

CHAPTER 164B.

REGULATION OF STEAM DISTRIBUTION COMPANIES.

Section 1. For purposes of this chapter, the term “department” shall refer to the department of public utilities. 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 may levy fines against a steam distribution company for failure to comply with regulations promulgated by the department. In determining the appropriateness of any fine, 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 the 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 4. Any entity operating a steam distribution system that does not meet the definition of a steam distribution company set forth in section 1 of chapter 164 shall be exempt from the requirements of this chapter and section 18A of chapter 25 if the entity files a detailed inspection and maintenance plan with the department every 2 years.

SECTION 80. 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 81. Section 22 of chapter 140 of the acts of 2005 is hereby amended by striking out the words "11C of chapter 25" and inserting in place thereof the following words:- 11I of chapter 25A.

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

SECTION 83. Commencing on July 1, 2009 , 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. Distribution companies may also voluntarily solicit additional 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 department of energy resources and shall be subject to review and approval by the department of public utilities. 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 department of energy resources regarding its choice of contracting methods and solicitation methods. All proposed contracts shall be subject to the review and approval of the department of public utilities.

The department of public utilities and the department 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; (b) require that contracts executed by the distribution company under such proposals are filed with, and approved by, the department of public utilities before they become effective; (c) provide for an annual remuneration for the contracting distribution company equal to 4 per cent of the annual payments under the contract to compensate the 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 a developer under the proposal meet the following criteria: (1) have a commercial operation date, as verified by the department of energy resources, on or after January 1, 2008; (2) be qualified by the department of energy resources as eligible to participate in the RPS program, under said section 11F of chapter 25A, and to sell RECs under the program; and (3) be determined by the department of public utilities to: (i) provide enhanced electricity reliability within the commonwealth; (ii) contribute to moderating system peak load requirements; (iii) be cost effective to Massachusetts electric ratepayers over the term of the contract; and (iv) where feasible, create additional employment in the commonwealth. As part of its approval process, the department of public utilities shall consider the attorney general's recommendations, which shall be submitted to the department of public utilities within 45 days following the filing of such contracts with the department of public utilities. The department of public utilities shall take into consideration both the potential costs and benefits of such contracts, and shall approve a contract only upon a finding that it is a cost effective mechanism for procuring renewable energy on a long-term basis.

Distribution companies 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 in the service territory of the distribution company. As long as the electric distribution company has entered into long term contracts in compliance with this section, it shall not be required by regulation or order to enter into contracts with terms of more than 3 years in meeting its applicable annual RPS requirements set forth in said section 11F of said chapter 25A, unless the department of public utilities finds that such contracts are in the best interest of customers; provided, however, that the electric distribution company may execute such contracts voluntarily, subject to the 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 the purpose of meeting the applicable annual RPS requirements set forth in said section 11F of said chapter 25A. 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 of energy resources 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 recommending legislative changes if it determines that actions are being taken that will adversely affect the energy and REC markets.

If the distribution company sells the purchased energy into the wholesale spot market and auctions the RECs as described in the fifth 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.

If the RPS requirements of said section 11F of said chapter 25A should ever terminate, the obligation to continue periodic solicitations to enter into long term contracts shall cease, but 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 department 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 said section 11F of said chapter 25A, 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 84. The secretary of energy and environmental affairs shall, in conjunction with the department of public utilities, implement an “energy pay and save”, hereinafter referred to as EPS, pilot program, allowing electric utility customers to purchase and install energy efficient or 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 in a form approved by the department, 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 that customer’s energy savings 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 of energy and environmental affairs 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 April 1, 2009 , and shall expire on December 31, 2009 . 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 July 31, 2010 .

SECTION 85. On or before April 1, 2009 , each electric distribution company shall file a proposed plan with the department of public utilities to establish a smart grid pilot program. Each such pilot program shall utilize advanced technology to operate an integrated grid network communication system in a limited geographic area. Each pilot program shall include, but not be limited to advanced (“smart”) meters that provide real time measurement and communication of energy consumption, automated load management systems embedded within current demand-side management programs and remote status detection and operation of distribution system equipment. On or before April 1, 2009 , each electric distribution company shall file a proposal with the department of public utilities to implement a pilot program that requires time of use or hourly pricing for commodity service for a minimum of 0.25 per cent of the company’s customers. A specific objective of the pilot shall be to reduce, for those customers who actively participate in the pilot, peak and average loads by a minimum of 5 per cent. The department shall work with the electric distribution companies to identify specific areas of study, and may incorporate and utilize information from past relevant studies or pilot programs. The department shall review and approve or modify such plans on or before August 1, 2010 . Plans which provide for larger numbers of customers and can show higher bill savings than outlined above shall be eligible to earn incentives as outlined in an approved plan. The programs filed by the distribution company shall include proposals for rate treatment of incremental program costs; provided, however, that such program costs shall be deemed by the department to be a cost of basic service and recovered in rates charged for basic service. 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 not later than September 1, 2012 detailing the operation and results of such programs, including information concerning changes in consumer’s energy use patterns, an assessment of the value of the program to both participants and non-participants and recommendations concerning modification of the programs and further implementation.

SECTION 86. 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 and shall ensure that such plan does not provide distribution companies with a market advantage over competitive suppliers of renewable energy generation attributes;

provided, however, that if a distribution company provides retail access to competitive sellers of renewable energy generation attributes before the effective date of this act, it shall not be required to file a plan under this section.

SECTION 87. There is hereby established a special commission to consist of 3 members of the senate, 1 of whom shall be the senate chair for the joint committee on telecommunications, utilities and energy who shall serve as co-chair, and 1 of whom shall be appointed by the senate minority leader; 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, and 1 of whom shall be appointed by the house minority leader; the commissioner 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 construction and demolition waste as it relates to the renewable energy portfolio standard program established by section 11F of chapter 25A of the General Laws. The 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, 2009 .

SECTION 88. There shall be a green building plan commission to examine the environmental and economic impact of establishing a green building plan for the commonwealth. The members of the commission shall be as follows: the commissioner of energy resources or a designee; the director of housing and community development or a designee; the secretary of environmental affairs or a designee; the secretary of administration and finance or a designee; 2 members of the senate, 1 of whom shall be appointed by the senate minority leader; 2 members of the house of representatives, 1 of whom shall be appointed by the house minority leader; the lieutenant governor or a designee, who shall be the chair of the commission; 1 person to be appointed by the Worcester Polytechnic Institute; 1 person to be appointed by the chancellor of the University of Massachusetts at Lowell; 1 person to be appointed by the president of the Massachusetts Institute of Technology; the director of the Massachusetts Technology Collaborative or a designee; 1 person to be appointed by the commissioner of the revenue; 1 person appointed by the Massachusetts Municipal Association; and a representative of the Boston Society of Architects. The chair shall have no vote except in the event of a tie vote. The commission shall file a report of its findings with the clerks of the senate and house of representatives not later than December 31, 2009 .

SECTION 89. There shall be a commission which shall study the siting of energy facilities in the commonwealth. The study shall include, but not be limited to, the following: (a) the development of a procedure for coordinating and consolidating applications to construct generating facilities between and among the energy facilities siting board, the department of environmental protection and other appropriate agencies, to enable one-stop shopping for necessary permits or certificates or other appropriate streamlining of the permitting system; (b) the expansion of such coordinated procedures to other energy facilities, if appropriate; (c) possible changes to the energy facilities siting board's procedures for reviewing electric and gas transmission lines in light of recent and proposed changes in the structure and regulation of the electric and gas industries, including regional approaches to the siting of such facilities; (d) clarification of the energy facilities siting board’s jurisdiction over the re-powering of existing generating facilities at existing sites and the appropriate standards for reviewing such re-powerings; (e) the development of coordinated

procedures to examine the reuse of existing industrial sites for the development of generating facilities; (f) the issue of application fees paid by developers to the energy facilities siting board and the correlation of such fees to the board's procedures, as statutorily revised under this act, in reviewing such applications; provided, however, that the study shall include, but not be limited to, recommendations, if any, on reducing the application fee paid by developers to the board in light of the board's statutorily revised standards of review of such applications under this act; (g) the establishment of a site characterization and suitability commission within the department of environmental protection, which would promulgate criteria to be applied to sites included in an application before the energy facilities siting board and rule on suitability of a proposed site as before the application is approved; and (h) the possibility of requiring applicants to provide either (1) evidence that the proposed facility would employ the best available and most efficient technology to control and reduce water withdrawals, or (2) a description of the environmental impacts, costs and reliability of the water withdrawal method chosen and an explanation of why the proposed technology was chosen; (i) whether current laws and regulations do not adequately facilitate the siting of renewable and alternative energy facilities, or whether they make it more difficult to site renewable energy facilities than fossil-fueled energy facilities, and, if either is the case, to make recommendations for changes to such laws and regulations; and (j) whether renewable and alternative energy generating facilities other than a waste-to-energy facility should be allowed as of right on property zoned for industrial use.

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

SECTION 90. The department of energy resources shall establish a pilot program to assist consumers with the purchase of energy efficient items for residential home modifications, hereinafter referred to as the HEAT Loan Program. 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; pipe insulation for heating systems; or other retail items for use in a residential dwelling that increase the energy efficiency of the 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 that is certified by the executive office of energy and environmental affairs 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 section 19 of chapter 25 of the General Laws and allocated to residential customers. Not less than $5 million shall be made available to assist participating financial institutions in offering these loan products by or through interest rate write downs or other credit enhancement features. Loans offered under the program shall be offered to residential homeowners in the commonwealth solely for the purposes stated in this section.

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, 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 91. On or before January 1, 2011 , the department of public utilities, in consultation with the department of energy resources, shall file a report on the effectiveness of the programs administered under section 19 of chapter 25 of the General Laws. The report shall include a financial accounting of all funds incurred by and administered under the section, and any recommendations deemed appropriate by the department of public utilities, including but not limited to, the increase, reduction or elimination of any mandatory charges authorized under said section 19 of said chapter 25 as they may relate to programs and plans under sections 21 and 22 of said chapter 25; 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. The report shall be filed with the clerks of the senate and house of representatives, the joint committee on telecommunications, utilities and energy, and the senate and house committees on ways and means.

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

The department of public utilities shall hold a public hearing and issue a report, not later than July 1, 2009 , relative to maintenance and repair standards for distribution systems of investor-owned electric and gas utilities. The department shall investigate and report on the establishment of performance or prescriptive standards or both that provide for inspection cycles for all overhead and underground facilities designed to minimize or prevent service interruptions and ensure high quality, safe and reliable service through the

maintenance of detailed compliance reporting by distribution companies and annual review by the department. The department shall consider cost, local geography and weather, applicable codes, national electric industry practices, sound engineering judgment and experience, and appropriate sanctions, including rate deductions or monetary fines for non-compliance. The department shall report its findings, recommendations and proposed legislation, if any, to the joint committee on telecommunications, utilities and energy, and the senate and house committees on ways and means.

SECTION 93. Notwithstanding any general or special law to the contrary, the department of energy resources shall make available monies from amounts collected through Alternative Compliance Payments established and administered under 225 CMR 14.00 adopted under section 11F of chapter 25A of the General Laws, in the form of grants or other financial incentives for the following: (a) the green communities program established under section 10 of said chapter 25A; (b) state or community 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; (c) commonwealth-based companies engaged in developing flywheel energy storage technologies; and (d) funding 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 94. The department of public utilities, in consultation with the department of energy resources, shall review and assess the effects of allowing electric and distribution companies to construct, own or operate solar generation facilities under subsection (f) of section 1A of chapter 164 of the General Laws. 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, 2011 . 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 said subsection (f) of said section 1A of said chapter 164.

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

SECTION 96. The department of energy resources, in consultation with the division of capital asset management and maintenance, shall establish, not later than July 1, 2009 , 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 97. On or before December 31, 2009 , 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. Such third party experts shall not have any contractual relationship with an electric or natural gas distribution company doing business in the commonwealth or any affiliate of such company.

SECTION 98. Not later than September 1, 2009 , 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 99. The Massachusetts Turnpike Authority shall develop a plan, in consultation with the executive office of transportation and the executive office of energy and environmental affairs, for the availability of alternative fuel at each fueling facility or service terminal on the Massachusetts Turnpike. The plan shall provide for the availability of alternative fuel at such locations not later than January 1, 2014 . If the authority determines that such availability is not feasible for any reason, including the status of leases it has with its tenants on the Massachusetts Turnpike, it shall report those findings, together with the reasons therefor and the status of similar plans or projects of adjacent states, if any, to the senate and house committees on ways and means and the joint committee on transportation not later than January 31, 2009 .

SECTION 100. (a) The commissioner of energy resources, in consultation with the secretary of administration and finance, the secretary of transportation, the general manager of the Massachusetts Bay Transportation Authority, a representative of the regional transit authorities, the secretary of economic affairs, the secretary of energy and environmental affairs and the operation services division, shall develop a statewide master plan for the advancement of hybrid and alternative fuel vehicles, as defined in section 1 of chapter 90 of the General Laws, and related technology.

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

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

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

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

SECTION 102. The department of public utilities, in consultation with the department of energy resources, shall hold a public hearing to examine the impacts on the competitive retail electricity marketplace through the existing electric utility default service adjustment mechanism. This public hearing shall include an examination of all costs that are recovered from ratepayers through this charge and recommended changes to insure that appropriate price signals are sent to the marketplace in order for

customers to make informed decisions about their energy consumption based on price. The department of public utilities shall hold the public hearing not later than May 1, 2009 . The department of public utilities shall file a report of its findings, including any legislative or regulatory recommendations, with the joint committee on telecommunications, utilities and energy and with the clerks of the senate and the house of representatives not later than June 1, 2009 .

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

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

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

“Department”, the department of energy resources.

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

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

(b) A renewable energy generating source, as defined in subsection (b) of section 11F of chapter 25A of the General Laws, that is physically located in or relocated to a control area adjacent to the ISO -NE control area may qualify as an eligible renewable energy generating source under said section 11F; provided, however, that the renewable energy generated by such renewable energy generating source is delivered into and used by consumers within the ISO -NE control area.

(c) The delivery of renewable energy into the ISO -NE control area, 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: (1) initiates the import transaction pursuant to a spot market sale into the ISO -NE administered markets or 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 Corporation tag from the generator in the adjacent control area to either a node or zone in the ISO -NE control area; (2) complies with all ISO -NE rules and regulations required to schedule and deliver the renewable energy generating source’s energy into the ISO -NE control area; and (3) commits the renewable generating source as a committed capacity resource for the applicable annual period.

(d) During any period in which the generator is delivering renewable energy from the renewable energy generating source into the ISO -NE control area, and notwithstanding compliance with subsection (c), 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: (1) the renewable energy actually generated by the renewable energy generating source; or (2) the renewable energy actually scheduled and delivered into the ISO -NE control area by the generator.

(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 from the ISO -NE control area made by the person seeking renewable portfolio credit for such renewable energy or any affiliate of such person, or 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 department may adopt regulations and requirements to implement this section.

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

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

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

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

There shall be a commission that shall advise the commissioner of energy resources with respect to this study. The commission shall be comprised of the commissioner or a designee who shall serve as chair, and 11 other members as follows: 4 of whom shall be appointed by the executive director of the Massachusetts Municipal Association, 3 of whom shall be from municipalities that are interested in establishing a municipal electric utility; 1 of whom shall be appointed by the attorney general and who shall be from the office of the attorney general; 1 of whom shall be appointed by the commissioner of the department of public utilities and who shall be from the department of public utilities; 1 of whom shall be a municipal finance expert recommended by the Massachusetts Taxpayers Foundation; 1 of whom shall be a representative of the Utility Workers of America; and 2 of whom shall be representatives to be appointed on a voluntary basis by the commissioner, 1 of whom shall be an executive from an investor-owned utility and the other of whom

shall be an executive of an existing municipal electric utility. The department of energy resources shall submit the study to the joint committee on telecommunications, utilities and energy not later than January 1, 2009 .

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

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

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

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

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

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

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

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

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

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

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

SECTION 109. Notwithstanding any general or special law to the contrary, the department of public utilities shall open an investigation and study relative to off-the-record ex-parte communications in any contested, on-the-record proceeding before the department. The department shall report to the general court 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 who shall forward the same to the chairs of the joint committee on telecommunications, utilities and energy on or before April 1, 2009 .

SECTION 110. Notwithstanding subsection (c) of section 19 of chapter 25 of the General Laws, for 3 years after 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 subclass for the electric or gas company shall not be reduced to less than the amount provided under law, guidelines and agreements in force as of January 1, 2009 .

SECTION 111. The first plans required under section 21 of chapter 25 of the General Laws shall be prepared and submitted to the energy efficiency advisory council on or before Apri1 30, 2009. The electric and natural gas distribution companies and municipal aggregators shall submit these plans, together with the energy efficiency advisory council's approval or comments and a statement of any unresolved issues, to the department of public utilities on or before October 31, 2009 .

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

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

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

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

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

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

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

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

(4) develop a plan to reduce total energy consumption in the commonwealth by at least 10 per cent by 2017 through the development and implementation of the green communities program, established by section 10 of chapter 25A of the General Laws, that utilizes renewable energy, demand reduction,

conservation and energy efficiency. Not later than September 1 of each year, the secretary of energy and environmental affairs shall establish an annual reduction target for the commonwealth for the following calendar year.

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

(1) reduction of energy use in state buildings;

(2) reduction of energy use in municipal buildings;

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

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

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

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

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

(c) The secretary of energy and environmental affairs shall appoint an advisory board to assist in the development and review of the plan. The board shall meet at the call of the secretary. The secretary shall submit the plan to the speaker of the house of representatives, the president of the senate, the senate and house committees on ways and means, and the joint committee on telecommunications, utilities and energy.

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

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

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

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

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

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

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

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

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

Approved July 2, 2008.