HOUSE DOCKET, NO. 625 FILED ON: 1/18/2011

HOUSE . . . . . No. 869

The Commonwealth of Massachusetts

PRESENTED BY:

Jay R. Kaufman and Stephen L. DiNatale

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to the establishment of municipal lighting authorities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jay R. Kaufman	*15th Middlesex*
Dennis A. Rosa	*4th Worcester*
Jennifer L. Flanagan	☐ *[District]* ☐
Gale D. Candaras	☐ *[District]* ☐
Thomas P. Conroy	*13th Middlesex*
Ruth B. Balser	*12th Middlesex*
James B. Eldridge	☐ *[District]* ☐
James J. Dwyer	*30th Middlesex*
Jason M. Lewis	*31st Middlesex*
Richard Bastien	*2nd Worcester*
Karen E. Spilka	☐ *[District]*

	□
Jennifer E. Benson	*37th Middlesex*
William N. Brownsberger	□ *[District]* □
Frank I. Smizik	*15th Norfolk*
Stephen L. DiNatale	*3rd Worcester*
Cory Atkins	*14th Middlesex*
Stephen Kulik	*1st Franklin*
Thomas M. Stanley	*9th Middlesex*
Ellen Story	*3rd Hampshire*
Martha M. Walz	*8th Suffolk*

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HOUSE . . . . . No. 869

By Messrs. Kaufman of Lexington and DiNatale of Fitchburg, a petition (accompanied by bill, House, No. 869) of Jay R. Kaufman, Stephen L. DiNatale and others for legislation to regulate the establishment of municipal lighting plants. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *3087* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to the establishment of municipal lighting authorities.

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. The first sentence of section 19 of chapter 25 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word “plant” the words:- formed prior to July 31, 2010.

SECTION 2. Said section 19 of chapter 25 is hereby further amended by inserting after the word “companies”, in line 5, the following words:- participating municipal lighting plants

SECTION 3. Section 20 of said chapter 25, as so appearing, is hereby amended by inserting after the word “plant”, in line 3, the words:- formed prior to July 31, 2010

SECTION 4. Said section 20 of chapter 25 is hereby further amended by inserting after the word “ plant”, in line 10, the words:- formed prior to July 31, 2010

SECTION 5. Section 21 of said chapter 25 is hereby amended by inserting after the word “companies”, in line 9, the words:- municipal light plants formed after July 31, 2010

SECTION 6. Said section 21 of chapter 25 is hereby further amended by inserting after the word “companies”, in line 77, the words:- municipal light plants

SECTION 7. Said section 21 of chapter 25 is hereby further amended by inserting after the word “companies”, in line 81, the words:- municipal light plants

16 SECTION 8. Said section 21 of chapter 25 is hereby further amended by inserting after
17 the word “companies”, in line 83, the words:- municipal light plants

18 SECTION 9. Said section 21 of chapter 25 is hereby further amended by inserting after
19 the word “companies”, in line 85, the words:- municipal light plants formed after July 31, 2010

20 SECTION 10. Said section 21 of chapter 25 is hereby further amended by inserting after
21 the word “companies”, in line 93, the words:- and municipal light plants

22 SECTION 11. Said section 21 of chapter 25 is hereby further amended by inserting after
23 the word “company”, in line 105, the words:- municipal light plant

24 SECTION 12. Said section 21 of chapter 25 is hereby further amended by inserting after
25 the word “company”, in line 110, the words:- municipal light plant

26 SECTION 13. Section 1B of chapter 164 of the General Laws, as so appearing, is hereby
27 amended by adding to the end of subsection (a) the following:-

28 except that the purchase by a municipality of plant from a distribution company shall
29 transfer all rights and obligations established in this section to the municipal lighting plant of the
30 purchasing municipality or cooperative.

31 SECTION 14. Said chapter 164 is hereby amended by striking out section 43, as so
32 appearing, and inserting in place thereof the following section:-

33 Section 43. (a) If a municipality which votes to establish a municipal lighting plant fails,
34 within 150 days from the passage of the final vote required by section 35 or 36, to agree, as to
35 price or as to the property to be included in the purchase, with a distribution company currently
36 serving such municipality, such municipality may apply to the department within 180 days after
37 the expiration of said 150 days for review of the feasibility of the municipality’s acquisition of
38 such property. The municipality’s filing shall include:

39 (1) an outline of the property the municipality wishes to acquire;

40 (2) a projection of purchase price of such property;

41 (3) a projection of total costs of establishing the municipal lighting plant;

42 (4) a financing plan to cover the purchase price, including a description of
43 municipality’s bonding ability;

44 (5) pro forma income statement and balance sheet for the municipal lighting plant;

45 (6) the options for governance of the municipal lighting plant approved or anticipated
46 by the municipality, and;

47 (7) a projection of electric rates to be charged by the municipal lighting plant.

48 (b) The department may investigate the feasibility of the municipality's proposed
49 acquisition, and shall, within 180 days of the filing and after notice and a public hearing, issue a
50 report regarding the feasibility of the municipality's filing; provided, however, that the
51 department is not required to issue more than 3 such reports in any contiguous 12-month period.
52 Any reports that are not issued within 180 days of the filing shall be issued in the order of the
53 filings. If multiple municipalities file with the stated intent of establishing a joint or cooperative
54 system of municipal lighting plants, the department shall process such filing simultaneously, to
55 the extent possible. The department shall transmit its report to the distribution company, the clerk
56 of each such town and the department of energy resources. The department shall report to the
57 general court the results of its findings and file such reports with the clerks of the house of
58 representatives and the senate, who shall forward the same to the joint committee on
59 telecommunications, utilities and energy.

60 (c) Upon the issuance of the department's report, or the expiration of the report deadline
61 in subsection (b) of this section, the municipality may seek determination as to what property
62 ought in the public interest to be included in the purchase and what price should be paid, which
63 shall be based on the value of the property to the distribution company under regulation, or the
64 sale price of the property, limiting any value associated with the franchise or right to serve
65 customers in the municipality to the inflation-adjusted price the distribution company paid to the
66 municipality for franchise rights. Such value shall be estimated without enhancement on account
67 of future earning capacity or good will, or of exclusive privileges derived from rights in the
68 public ways. In addition to the property valuation, the department shall determine other charges
69 appropriately associated with transfer of the property, including (1) a mechanism to ensure that
70 the municipal light plant bears a fair share of the distribution company's stranded costs; (2)
71 appropriate contractual and ownership arrangements to fairly allocate the capital and operating
72 costs associated with the least-cost method of safely and reliably operating the distribution
73 company and the municipal light plant, which may include metering, infrastructure
74 reconfiguration or additions and engineering costs, as determined by the department; and (3)
75 any other costs prudently incurred in preparing for the transfer. Such property shall include such
76 portion of the property within the limits of such municipality as is suitable for, and used in
77 connection with, the distribution of electricity within such limits. If any such property is subject
78 to any mortgages, liens or other encumbrances, the department in making its determination shall
79 provide for the deduction or withholding from the purchase price, pending discharge, of such
80 sum or sums as it deems proper.

81 (d) The department, after notice to the parties, shall give a hearing thereon and make the
82 determination aforesaid within 180 days from the municipality's application.

83 (e) Within 60 days after such determination shall have been made by the department, the
84 distribution company shall tender to the municipality's city or town clerk a copy of a good and

85 sufficient deed of conveyance for the property required by the department to be purchased, and
86 shall then place said deed in escrow. The municipality shall have 300 days in which to accept or
87 reject said tender, or to appeal to the department any aspect of the proposed deed of conveyance
88 and, if accepting, to pay to the distribution company the price determined by the department.
89 Such acceptance or rejection in case of a city shall be by vote of its city council and in case of a
90 town shall be by vote at a town meeting, or by such town officer or body to which town meeting
91 shall delegate such authority. In the event that the distribution company fails to comply with the
92 preceding requirements, the price to be paid by the municipality will immediately be reduced by
93 one percent of the price determined by the department. For every thirty additional days that pass
94 prior to the distribution company's compliance with the preceding requirements, the price will be
95 reduced by an additional one percent. Provided, however, that the department may waive such
96 reduction if it finds that the delay in compliance was beyond the control of the distribution
97 company.

98 (f) In connection with the exercise by a municipality of the option to purchase utility
99 plant pursuant to this section, the municipality may elect to assume responsibilities for
100 maintenance, placement and removal of jointly-owned poles or other facilities shared with other
101 public utilities, or to purchase such facilities at a price set by the department, which shall be
102 based on the value of the property to the distribution company under regulation, or the sale price
103 of the property, limiting any value associated with the franchise or right to serve customers in the
104 municipality to the inflation-adjusted price the distribution company paid to the municipality for
105 franchise rights. . Except where the municipality makes such election, the municipality shall
106 assume the rights and obligations of the previous owner with respect to any person other than the
107 distribution company controlling or using the poles, conduit or other jointly-owned or joint-use
108 facilities, property and rights; provided, that in the assumption of the rights and obligations of the
109 previous owner by such a municipality, such municipality shall in no way or form restrict,
110 impede, or prohibit access that other parties would enjoy under the previous ownership.

111 (g) Any municipal lighting plant established pursuant to these provisions shall file with
112 the department a plan for supporting development of renewable and alternative energy
113 production comparable to the magnitude of such support achieved under sections 11F and 11F½
114 of chapter 25A, sections 138 through 143, and section 83 of chapter 169 of the acts of 2008.
115 Following department approval of such plan, the municipal lighting plant shall implement that
116 plan and report annually to the department regarding such implementation.

117 (h) The department shall not allow as a cost of service any costs of the incumbent
118 distribution company in connection with such proceedings, in excess of the costs reasonably
119 necessary to provide information, negotiate necessary contractual arrangements, and represent
120 the interests of the remaining ratepayers in designing any severance plan required.

121 (i) If, at the time of purchase of the distribution equipment by a municipality, the
122 distribution company has unfunded liabilities for pensions and other post-retirement benefits that

123 would be recovered through distribution rates, the department shall determine the fair share of
124 such liabilities attributable to the distribution system to be acquired by the municipality and the
125 method by which the municipal lighting plant shall compensate the distribution company for that
126 fair share.

127 (j) To the extent that the distribution company has entered into any long term contracts
128 for renewable energy pursuant to section 83 of chapter 169 of the acts of 2009 prior to the date of
129 the acquisition, the municipality acquiring any electric distribution facilities pursuant to this
130 section shall be required to assess its distribution customers an equivalent charge in distribution
131 rates to cover its proportionate share of the monthly costs of such contracts, as would have been
132 charged to the electric distribution customers in such municipality had the acquisition not
133 occurred. Such amounts collected shall then be remitted to the electric distribution company
134 within thirty days of being invoiced by the electric distribution company.

135 (k) The department shall report to the joint committee on telecommunications, utilities
136 and energy annually on the operation of this section, including a summary of activity under this
137 section and any recommendations for amending the section.

138 SECTION 15. Said chapter 164 is hereby further amended by inserting after section 56E
139 the following section:-

140 Section 56F. The department is hereby authorized to promulgate rules and regulations to
141 establish service quality standards for municipal light plants formed after July 31, 2010,
142 including, but not limited to, standards for customer satisfaction, service outages, distribution
143 facility upgrades, repairs and maintenance, telephone service, billing service, and public safety
144 provided. Each municipal light plant formed after July 31, 2010 shall file a report with the
145 department by March first of each year comparing its performance during the previous calendar
146 year to the department's service quality standards and any applicable national standards as may
147 be adopted by the department.

148 SECTION 16. The first sentence of section 47A of said chapter 164 is hereby amended
149 by inserting after the word “law” the words:- formed prior to July 31, 2010

150 SECTION 17. Said section 47A of chapter 164 is hereby further amended by inserting
151 after the word “law”, in line 7, the words:- formed prior to July 31, 2010.

152 SECTION 18. Said section 47A of chapter 164 is hereby further amended by inserting
153 after subsection (f):-

154 (g) Any municipal light plant formed after July 31, 2010, shall submit to the
155 department a plan for allowing retail customers served by it competitive choice of generation
156 supply. Such plan shall allow any customers purchasing competitive generation supply at the
157 plan’s effective date to continue such purchase, and shall regulate migration of customers to and

158 from competitive service only as necessary to protect the financial integrity of the municipal
159 light plant while providing power to municipal-utility generation customers at the lowest feasible
160 stable prices.

161 SECTION 19: Said chapter 164 is hereby amended by inserting after section 34B:-

162 Section 34C: Each electric distribution company shall maintain accounts of plant in
163 service in each municipality in its service territory, including the original cost of plant,
164 accumulated depreciation, and any other measures of the value of plant that the department may
165 order used for determination of sale prices under section forty-three of this chapter. The
166 distribution company shall maintain such account s by the system of accounts approved by the
167 department. Upon the request of any clerk of any municipality in its service territory, the
168 distribution company shall provide such accounts for that municipality within thirty days. In the
169 event that the distribution company fails to comply with this provision, it shall be liable to the
170 municipality for one thousand dollars for every day of noncompliance.