

HOUSE No. 3331

The Commonwealth of Massachusetts

PRESENTED BY:

Michael P. Kushmerek and John Cronin

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 adoption of the accompanying bill:

An Act relative to the establishment of municipal lighting authorities.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-------------------------------|--------------------------------|------------------|
| <i>Michael P. Kushmerek</i> | <i>3rd Worcester</i> | <i>2/17/2021</i> |
| <i>John Cronin</i> | <i>Worcester and Middlesex</i> | <i>2/17/2021</i> |
| <i>Michelle L. Ciccolo</i> | <i>15th Middlesex</i> | <i>2/26/2021</i> |
| <i>Kate Lipper-Garabedian</i> | <i>32nd Middlesex</i> | <i>3/19/2021</i> |
| <i>Tami L. Gouveia</i> | <i>14th Middlesex</i> | <i>4/12/2021</i> |
| <i>Carol A. Doherty</i> | <i>3rd Bristol</i> | <i>4/12/2021</i> |

HOUSE No. 3331

By Representative Kushmerek of Fitchburg and Senator Cronin, a joint petition (accompanied by bill, House, No. 3331) of Michael P. Kushmerek, John Cronin and others relative to the establishment of municipal lighting authorities. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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:

1 SECTION 1. Section 19 of chapter 25 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by inserting after the word “plant”, in line 3, the following
3 words:- formed prior to December 31, 2022.

4 SECTION 2. Said section 19 of said chapter 25, as so appearing, is hereby further
5 amended by inserting after the word “companies”, in line 6, the following words:- , participating
6 municipal lighting plants.

7 SECTION 3. Section 20 of said chapter 25, as so appearing, is hereby amended by
8 inserting after the word “plant”, in line 3, the following words:- formed prior to December 31,
9 2022.

10 SECTION 4. Said section 20 of said chapter 25, as so appearing, is hereby further
11 amended by inserting after the word “ plant”, in line 11, the following words:- formed prior to
12 December 31, 2022.

13 SECTION 5. Section 21 of said chapter 25, as so appearing, is hereby amended by
14 inserting after the word “companies”, in line 10, the following words:- , municipal light plants
15 formed after December 31, 2022.

16 SECTION 6. Said section 21 of said chapter 25, as so appearing, is hereby further
17 amended by inserting after the word “companies”, in line 92, the following words:- , municipal
18 light plants.

19 SECTION 7. Said section 21 of said chapter 25, as so appearing, is hereby further
20 amended by inserting after the word “companies”, in line 96, the following words:- , municipal
21 light plants.

22 SECTION 8. Said section 21 of said chapter 25, as so appearing, is hereby further
23 amended by inserting after the word “companies”, in line 98, the following words:- , municipal
24 light plants.

25 SECTION 9. Said section 21 of said chapter 25, as so appearing, is hereby further
26 amended by inserting after the word “companies”, in line 101, the following words:- , municipal
27 light plants formed after December 31, 2022.

28 SECTION 10. Said section 21 of said chapter 25, as so appearing, is hereby further
29 amended by inserting after the word “companies”, in line 109, the following words:- and
30 municipal light plants.

31 SECTION 11. Said section 21 of said chapter 25, as so appearing, is hereby further
32 amended by inserting after the word “company”, in line 116, the following words:- , municipal
33 light plant.

34 SECTION 12. Said section 21 of said chapter 25, as so appearing, is hereby further
35 amended by inserting after the word “company”, in line 122, the following words:- , municipal
36 light plant.

37 SECTION 13. Said section 21 of said chapter 25, as so appearing, is hereby further
38 amended by inserting after the word “company”, in line 127, the following words:- , municipal
39 light plant.

40 SECTION 14. Section 1B of chapter 164 of the General Laws, as so appearing, is hereby
41 amended by inserting, after the word “affected”, in line 10, the following words:-

42 ; provided, however, that the purchase by a municipality or cooperative of a plant from a
43 distribution company shall transfer all rights and obligations established in this section to the
44 municipal lighting plant of the purchasing municipality or cooperative.

45 SECTION 15. Said chapter 164 is hereby amended by striking out section 43 and
46 inserting in place thereof the following section:-

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

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

54 (2) a projection of purchase price of the property;

- 55 (3) a projection of total costs of establishing the municipal lighting plant;
- 56 (4) a financing plan to cover the purchase price, including a description of municipality's
57 bonding ability;
- 58 (5) pro forma income statement and balance sheet for the municipal lighting plant;
- 59 (6) the options for governance of the municipal lighting plant approved or anticipated by
60 the municipality; and
- 61 (7) a projection of electric rates to be charged by the municipal lighting plant.

62 (b) The department may investigate the feasibility of the municipality's proposed
63 acquisition, and shall, within 180 days of the filing and after notice and a public hearing, issue a
64 report regarding the feasibility of the municipality's filing; provided, however, that the
65 department shall not be required to issue more than 3 such reports in any contiguous 12-month
66 period. Any reports that are not issued within 180 days of the filing shall be issued in the order of
67 the filings. If multiple municipalities file with the stated intent of establishing a joint or
68 cooperative system of municipal lighting plants, the department shall process such filings
69 simultaneously, to the extent possible. The department shall transmit its report to the distribution
70 company, the clerk of each municipality and the department of energy resources. The department
71 shall report to the general court the results of its findings and file such reports with the clerks of
72 the house of representatives and the senate, who shall forward the same to the joint committee on
73 telecommunications, utilities and energy. The department may assess reasonable fees to fund its
74 responsibilities under this subsection from each municipality submitting a filing for a proposed
75 acquisition.

76 (c) Upon the issuance of the department's report, the municipality may seek
77 determination as to what property ought in the public interest to be included in the purchase and
78 what price should be paid, which shall be based on the standard formula developed by the
79 department in subsection (d). The value shall be estimated without enhancement on account of
80 future earning capacity or good will or of exclusive privileges derived from rights in the public
81 ways. The price shall include damages, if any, which the department finds would be caused by
82 the severance of the proposed purchase property from other property of the owner, including: (1)
83 stranded costs; (2) capital costs of infrastructure reconfiguration or additions caused by the
84 severance; (3) engineering costs; and (4) any other costs incurred in preparing for the
85 reconfiguration and the sale. The property shall include the portion of the property within the
86 limits of the municipality as is suitable for, and shall be used in connection with, the distribution
87 of electricity within such limits. If any such property is subject to any mortgages, liens or other
88 encumbrances, the department in making its determination shall provide for the deduction or
89 withholding from the purchase price, pending discharge, of such sum or sums as it deems proper.
90 The department may assess reasonable fees to fund its responsibilities under this subsection from
91 each municipality seeking such determination for a proposed acquisition.

92 (d) No later than December 31, 2022 the department shall develop a standard formula
93 used to determine the value of property, including any jointly-owned poles or other facilities
94 shared with other public utilities, to be purchased by any municipality seeking to establish a
95 municipal lighting plant under this section. The formula shall be used by the department in all
96 determinations of property value performed under subsections (c) and (g); provided, however,
97 that the department may make reasonable exceptions to the formula in specific transactions.

98 (e) The department, after notice to the parties to the proposed acquisition, shall give a
99 hearing on the proposed acquisition and make the determination described in subsection (c) not
100 more than 180 days after the date of the municipality's application.

101 (f) Not more than 60 days after the department makes the determination described in
102 subsection (c), the distribution company shall tender to the municipality's clerk a copy of a good
103 and sufficient deed of conveyance for the property to be purchased and place the deed in escrow.
104 The municipality shall have not more than 300 days after the date of tender in which to accept or
105 reject the tender and, if accepting, to pay to the distribution company the price determined by the
106 department. In the case of a city, the city council shall vote to accept or reject the tender and a
107 majority of the voters at an annual or special city election shall ratify the city council vote. In
108 case of a town, a town meeting or a town officer or body to which the town meeting delegates
109 authority shall vote to accept or reject the tender and a majority of voters at an annual or special
110 town election shall ratify the vote.

111 (g) In connection with the exercise by a municipality of the option to purchase a utility
112 plant pursuant to this section, the municipality may elect to assume responsibilities for
113 maintenance, placement and removal of jointly-owned poles or other facilities shared with other
114 public utilities or to purchase such facilities at a price set by the department based on the
115 standard formula established in subsection (d). Except where the municipality makes such
116 election, the municipality shall assume the rights and obligations of the previous owner with
117 respect to any person other than the distribution company controlling or using the poles, conduits
118 or other jointly-owned or joint-use facilities, property and rights; provided, that in the
119 assumption of the rights and obligations of the previous owner by a municipality, the

120 municipality shall in no way or form restrict, impede or prohibit access that other parties would
121 enjoy under the previous ownership.

122 (h) A municipal lighting plant established pursuant to this section shall file with the
123 department a plan for supporting development of renewable and alternative energy production
124 comparable to the magnitude of such support achieved under: (1) sections 138 to 143, inclusive,
125 (2) sections 11F and 11F½ of chapter 25A and (3) section 83 of chapter 169 of the acts of 2008.
126 Following department approval of such plan, the municipal lighting plant shall implement the
127 plan and report annually to the department regarding implementation.

128 (i) The department shall not allow any costs of the incumbent distribution company in
129 connection with the proceedings described in this section as a cost of service in excess of the
130 costs reasonably necessary to provide information, negotiate necessary contractual arrangements
131 and represent the interests of the remaining ratepayers in designing any severance plan required.

132 (j) If, at the time of purchase of the distribution equipment by a municipality, the
133 distribution company has unfunded liabilities for pensions and other post-retirement benefits that
134 would be recovered through distribution rates, the department shall determine the fair share of
135 such liabilities attributable to the distribution system to be acquired by the municipality and the
136 method by which the municipal lighting plant shall compensate the distribution company for that
137 fair share.

138 (k) To the extent that the distribution company has entered into any long term contracts
139 for renewable energy pursuant to section 83 of chapter 169 of the acts of 2008 prior to the date of
140 the acquisition, the municipality acquiring any electric distribution facilities pursuant to this
141 section shall be required to assess its distribution customers an equivalent charge in distribution

142 rates to cover its proportionate share of the monthly costs of such contracts, as would have been
143 charged to the electric distribution customers in such municipality had the acquisition not
144 occurred. Such amounts collected shall then be remitted to the electric distribution company
145 within 30 days of being invoiced by the electric distribution company.

146 (l) The department shall report to the joint committee on telecommunications, utilities
147 and energy annually on the operation of this section, including a summary of activity under this
148 section and any recommendations for amending the section.

149 SECTION 16. Section 47A of said chapter 164, as so appearing, is hereby amended by
150 inserting after the word “law”, in line 2, the following words:- formed prior to December 31,
151 2022.

152 SECTION 17. Said section 47A of said chapter 164, as so appearing, is hereby further
153 amended by inserting after the word “law”, in line 7, the following words:- formed prior to
154 December 31, 2022.

155 SECTION 18. Said section 47A of said chapter 164, as so appearing, is hereby further
156 amended by adding the following subsection:-

157 (g) Any municipal light plant formed after December 31, 2022, shall submit to the
158 department a plan for allowing its retail customers a competitive choice of generation supply.
159 The plan shall allow a customer purchasing competitive generation supply at the plan’s effective
160 date to continue such purchase and shall regulate migration of customers to and from competitive
161 service only as necessary to protect the financial integrity of the municipal light plant while
162 providing power to municipal-utility generation customers at the lowest feasible stable prices.

163 SECTION 19. Said chapter 164 is hereby amended by inserting after section 56E the
164 following section:-

165 Section 56F. The department may promulgate rules and regulations to establish service
166 quality standards for municipal light plants formed after December 31, 2022, including, but not
167 limited to, standards for customer satisfaction, service outages, distribution facility upgrades,
168 repairs and maintenance, telephone service, billing service and public safety provided. Each
169 municipal light plant formed after December 31, 2022 shall file a report with the department by
170 March first of each year comparing its performance during the previous calendar year to the
171 department's service quality standards and any applicable national standards as may be adopted
172 by the department.

173 SECTION 20. The executive office of energy and environmental affairs may to adopt
174 rules and regulations necessary to carry out the requirements of this act.