The department shall issue regulations that implement this section. Any regulations issued by the department shall incorporate all the provisions contained herein, provided, however, that said regulations may contain additional provisions that are stricter than the prohibitions of this section provided that such provisions are consistent with the intent of this section.

SECTION 9. Chapter 25A of the General Laws is hereby amended by striking sections 1 and 2, as so appearing, and inserting in place thereof the following 2 sections:-

Section 1. There shall be a department of clean energy which shall be under the supervision, direction and control of a commissioner of clean energy. The commissioner shall be appointed by the governor and shall be a person of skill and experience in the field of energy regulation or policy. The commissioner shall be the executive and administrative head of the department and shall be responsible for administering and enforcing the provisions of law relative to the department and to each administrative unit thereof. The commissioner shall serve at the pleasure of the governor, shall receive such salary as may be determined by law, and shall devote his full time to the duties of his 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 governor, the governor 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. (a) There shall be within the department of clean energy 3 divisions, a division of energy efficiency which shall work with the department of public utilities regarding the energy efficiency programs; a division of renewable and alternative energy development which shall oversee and coordinate activities that seek to maximize the installation of renewable energy generating resources that will provide benefits to ratepayers, advance the production and use of bio-fuels and other alternative fuels as the division may define by regulation, and administer the Massachusetts renewable portfolio standard, established in section 11F; and 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 clean energy. Said divisions shall be headed by a director who shall be appointed by the commissioner and shall be a person of skill and experience in the field of energy efficiency, renewable or alternative energy, and energy regulation or policy, respectively. The directors shall be the executive and administrative head of their respective division and shall be responsible for administering and enforcing the provisions of law relative to said division and to each administrative unit thereof. The director shall serve at the pleasure of the commissioner, shall receive such salary as may be determined by law, and shall devote his full time to the duties of his 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 acting 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 directors shall be responsible for carrying out the work of their respective divisions under the supervision, direction, and control of the commissioner.

(b) 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 two 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.

(c) Subject to appropriation, the commissioner may appoint such persons as he shall deem necessary to perform the functions of the department, provided that the provisions of chapter 31 and section 9A of chapter 30 shall not apply to any person holding any such appointment. Every person so appointed to any position in the department shall have experience and skill in the field of such position. So far as practicable in the judgment of the commissioner, appointments to such positions in the department shall be made by promoting or transferring employees of the commonwealth serving in positions which are classified under said chapter 31, and such appointments shall at all times reflect the professional needs of the administrative unit affected. If an employee serving in a position which is classified under said chapter 31 or in which an employee has tenure by reason of said section 9A of chapter 30 shall be appointed to a position within this office which is not subject to the provisions of said chapter 31, the employee shall upon termination of his service in such position be restored to the position which he held immediately prior to such appointment; provided, however, that his service in such position shall be determined by the civil service commission in accordance with the standards applied by said commission in administering said chapter 31. Such restoration shall be made without impairment of his civil service status or tenure under said section 9A of chapter 30 and without loss of seniority, retirement or other rights to which uninterrupted service in such prior position would have entitled him. During the period of such appointment, each person so appointed from a position in the classified civil service shall be eligible to take any competitive promotional examination for which he would otherwise have been eligible.

SECTION 10. Section 3 of said chapter 25A, as so appearing, is hereby amended by striking out, in line 11, the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 11. Section 3 of said chapter 25A as so appearing is hereby amended by inserting after the definition of "Energy management services" the following definition —

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

SECTION 12. Section 5 of said chapter 25A, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The

commissioner of clean energy shall file an annual report with the joint committee on telecommunications, utilities and energy and the house and senate committees on ways and means: (a) listing the number of employees of the department of clean energy, 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 13. 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 words:- department of clean energy.

SECTION 14. Section 7 of said chapter 25A, as so appearing, is hereby amended by striking out, in lines 1, 21 and 22 and in line 29, the words "division of energy resources" and inserting in place thereof, in each instance, the following words:- department of clean energy.

SECTION 15. 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 words:- department of clean energy.

SECTION 16. Section 9 of said chapter 25A, as so appearing, is hereby amended by striking out, in line 10 the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 17. Section 10 of said chapter 25A is hereby repealed.

SECTION 18. 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 words:- department of clean energy.

SECTION 19. Said section 11F of said chapter 25A, as so appearing is hereby further amended by striking out subsections (a) and (b) and inserting in place thereof the following 5 subsections:-

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

every year thereafter. For the purpose of this subsection, a new renewable energy generating source is one that begins commercial operation after December 31, 1997, or that represents an increase in generating capacity after December 31, 1997, at an existing facility. Commencing on January 1, 2009, such minimum percentage requirement shall be known as the "Class I" renewable energy generating source requirement.

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

(c) Commencing on January 1, 2008, such new renewable energy generating sources meeting the requirements of this paragraph shall be known as Class I renewable energy generating sources. For the purposes of this section, a new renewable energy generating source is one that begins commercial operation after December 31, 1997, or the net increase from incremental new generating capacity after December 31, 1997 at an existing facility, where the facility generates electricity using any of the following: (i) solar photovoltaic or solar thermal electric energy; (ii) wind energy; (iii) ocean thermal, wave, or tidal energy; (iv) fuel cells utilizing renewable fuels; (v) landfill gas; (vi) incremental energy resulting from increased capacity and efficiency at hydroelectric facilities licensed by FERC after 1986, or at hydroelectric facilities that receive FERC approval to construct improvements necessary to provide such incremental energy, so long as such increased capacity and efficiency does not involve pumped storage of water; provided that only such improvements to a hydroelectric facility made after January 1, 1998, and only up to 5 megawatts per facility of incremental new energy attributable to such improvements, shall be considered a new renewable energy generating source; and provided further that the facility meets all applicable current state and federal fish passage requirements; (vii) low-emission, advanced biomass power conversion technologies, such as gasification using fuels such as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel; or (viii) geothermal energy.

(d) Commencing on January 1, 2009, every retail electric supplier providing service under contracts executed or extended on or after January 1, 2009, shall also provide a minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth from Class II renewable energy generating sources. For the purposes of this section, a Class II renewable energy generating source is one that began commercial operation before December 31, 1997 and generates electricity using any of the following: (i) solar photovoltaic or solar thermal electric energy; (ii) wind energy; (iii) ocean thermal, wave, or tidal energy; (iv) fuel cells utilizing renewable fuels; (v) landfill gas; (vi) waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (vii) a run-of-the river hydroelectric facility that does not utilize a dam constructed subsequent to December 31, 1997, does not entail any new impoundment or

diversion of water subsequent to December 31, 1997, and where such facility (a) has a nameplate capacity of 5 megawatts or less, (b) meets all applicable current state and federal fish passage requirements, and (c) has not been recommended for decommissioning or removal by any federal, state or local agency responsible for environmental protection or public safety with regulatory jurisdiction over rivers, dams or hydroelectric facilities; (viii) low-emission biomass power conversion technologies, such as gasification using fuels such as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel; or (ix) geothermal energy. After conducting administrative proceedings, the department may add technologies or technology categories to any above list; provided, however, that the following technologies shall not be considered renewable energy supplies: coal, oil, natural gas, and nuclear power.

(e) On or before June 30, 2008, the department of clean energy shall determine the actual percentage of kilowatt-hour sales to end-use customers in the commonwealth which was derived from Class II generating sources in 1998. On or before January 1, 2009, every retail supplier shall annually provide to end-use customers in the commonwealth, generation attributes from Class II energy facilities in the amount equal to the percent of the kilowatt hour sales from Class II energy generating sources in 1998, and shall provide at least that percentage of Class II generation attributes each year thereafter. 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 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). For purposes of calculating a retail supplier's minimum percentage of kilowatt-hour sales of Class II renewable energy generating sources, retail supplier's annual, kilowatt-hours sales to end-use customers shall be net of kilowatt-hours of energy that such retail supplier is obligated to purchase in that year pursuant to an agreement that was entered into prior to October 1, 2007. 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 thedepartment. 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.

SECTION 20. Said chapter 25A is hereby further amended by inserting after section 11F the following section:-

Section 11F1/2(a). The department of clean energy shall establish an alternative energy portfolio standard for all retail electricity suppliers selling electricity to end-use customers in the commonwealth. Beginning January 1, 2009, every retail supplier shall provide a 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: (i) coal gasification; (ii) combined heat and power; or (iii) any other alternative energy technology approved by the department pursuant to an administrative proceeding conducted pursuant to chapter 30A; provided, however, that the following technologies shall not be considered alternative energy supplies: coal, except when used in coal gasification, oil, and natural gas, except when used in coal

gasification. The department shall set emission performance standards including for CO2 for all technologies included in this section consistent with the state's environmental goals.

(b) The department shall promulgate regulations allowing for a retail supplier to discharge its obligations under this section by making an alternative compliance payment in an amount established by the 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.

SECTION 21. Section 11G of said chapter 25A is hereby repealed.

SECTION 22. Section 11H of said chapter 25A, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 1, the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 23. Said chapter 25A is hereby further amended by inserting after section 11L the following section:-

Section 11M. For the purposes of this section, the following words shall have the following meanings:-

"Capacity resource", an external resource as defined by ISO-NE's Manual M-20, Section 3.8.7. External Resources.

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

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

A renewable energy generating source as described in section 11F that is physically located in or relocated to a control area adjacent to the ISO New England ("ISO-NE") control area may qualify as an eligible renewable energy generating source under section 11F, provided however, that the renewable energy electricity generated by such renewable energy generating source was delivered into and used by consumers within the ISO-NE control area.

The delivery of renewable energy into the ISO-NE as described in the second paragraph shall not qualify under the renewable portfolio standard, notwithstanding such delivery into the ISO-NE control area, unless the generator of such renewable energy: (i) initiates the import transaction pursuant to a bilateral sales contract with a purchaser of the renewable energy located in the ISO-NE control area by properly completing a North American Electric Reliability Council tag from the generator in the adjacent control area to either a node or zone in the ISO-NE control area; (ii) commits its renewable energy generating source to the ISO-NE control area as a capacity resource for a period of not less than 5 years beginning on the date the renewable energy generating source receives qualification from the; and (iii) complies with all ISO-NE rules and regulations

required to schedule and deliver all of the renewable energy generating source's energy and capacity into the ISO-NE control area.

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

The renewable portfolio standard credit applicable to the eligible renewable energy as determined pursuant to the fourth paragraph 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.

The department through duly adopted regulations may require such other requirements as it deems appropriate consistent with this section.

SECTION 24. Section 12 of said chapter 25A, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 15, the word "energy" and inserting in place thereof the following words:- telecommunication, utilities and energy.

SECTION 25. Section 13 of said chapter 25A, as so appearing, is hereby amended by striking out, in lines 10 to 11, the words "Division of Energy Resources Credit Trust Fund" and inserting in place thereof the following words:- Department of Clean Energy Credit Trust Fund.

SECTION 26. 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 words:- department of clean energy.

SECTION 27. Said section 13 of said chapter 25A, as so appearing, is hereby further amended by striking out, in line 16 and 17, the word "division" and inserting in place thereof the following word:- department.

SECTION 28. Said chapter 25A is hereby further amended by adding the following 5 sections:-

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

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

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

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

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

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

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

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

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

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

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

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

unless approved and signed by said commissioner. Said commissioner may delegate to state agencies and building authorities the authority to enter into such contracts with an estimated construction cost of less than $200,000. Such delegation shall be in writing from the commissioner to the regulating agency or building authority.

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

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

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

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

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

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

Subject to a governmental body's authority to reject, in whole or in part, any and all proposals, as provided in this section, a governmental body shall unconditionally accept a proposal

without alternation or correction, except as provided in this paragraph. An offeror may correct, modify, or withdraw a proposal by written notice received in the office designated in the request for proposals prior to the time and date set for opening the proposals. After proposal opening, an offeror may not change any provisions of the proposal in a manner prejudicial to the interests of the governmental body or fair competition. The governmental body shall waive minor informalities or allow the offeror to correct them. If a mistake and the intended proposal are clearly evident on the face of the proposal document, the governmental body shall correct the mistake to reflect the intended correction and so notify the offeror in writing, and the offeror may not withdraw the proposal. An offeror may withdraw a proposal if a mistake is clearly evident on the face of the proposal but the intended correction is not similarly evident.

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

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

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

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

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

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

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

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

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

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

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

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

"Energy management systems", the design and installation of systems or maintenance programs to conserve energy use within a building, including, without limitation, performance-contracting energy saving projects; the installation or modification of new and existing equipment which will reduce energy and water consumption associated with heating, ventilation, and air conditioning system, lighting system, building envelope, domestic hot water system, and other

energy and water using devices; and the work associated with monitoring and verifying project savings and the study or design of the subject work, whether performed directly or managed through subcontractors.

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

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

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

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

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

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

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

(b) A public agency may choose to use this section in the procurement of energy management services as an alternative to the procedures set out in section 11C. Nothing in this section shall preclude any such agency from choosing to proceed thereafter under said section 11C.

A public agency may enter into a guaranteed energy savings contract in order to achieve energy savings at facilities in accordance with this section. All energy savings measures shall comply with current local, state and federal construction, and environmental codes and regulations. Prior to entering into a guaranteed energy savings contract, a public agency shall issue a request for qualifications. Public notice of the request for qualifications shall conform to the procedures set forth in subsection (1) of section 44J of chapter 149. At least 1 week before soliciting a request for qualifications for a guaranteed energy savings contract, a public agency shall notify the commissioner of energy resources in writing, in a form and including information as the commissioner of the division of capital asset management and maintenance shall prescribe by regulation, of the agency's intent to solicit qualifications. The notification, at a minimum, shall include a copy of the agency's request for qualifications. An acknowledgment of receipt, in a form and including information as the commissioner of the division of capital asset management and maintenance shall prescribe by regulation, shall be issued by the commissioner of energy resources to the public agency upon successful compliance with the requirements of this subsection. Qualifications shall be opened publicly, in the presence of 2 or more witnesses, at the time specified in the request for qualifications, and shall be available for public inspection. The provisions of sections 44A and 44B and sections 44E to 44H, inclusive, of said chapter 149 shall not apply to contracts procured pursuant to this section. Section 44D of said chapter 149 shall apply as appropriate to qualifications submitted for contracts under this section, and every such qualification shall be accompanied by (1) a copy of a certificate of eligibility issued by the commissioner of the division of capital asset management, and (2) by an update statement.

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

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

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

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

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

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

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

(g) The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the amount of energy savings guaranteed will be achieved or the qualified provider shall reimburse the public agency for the shortfall amount. Methods for measurement and verification of guaranteed savings shall conform to the most recent standards established by the Federal Energy Management Program of the United States Department of Energy. The secretary shall enforce the requirements of this section and regulations promulgated hereunder as they relate to public agencies except for state agencies and building authorities and shall have all the necessary powers to require compliance therewith. The commissioner of the division of capital asset management and maintenance shall enforce the regulations as they relate to state agencies and building authorities. Any order of the commissioner of energy resources under this subsection shall be effective and may be enforced according to its terms, and enforcement thereof shall not be suspended or stayed by the entry of an appeal. The superior court for Suffolk County shall have jurisdiction over appeals of orders of the commissioner of energy resources under this subsection, and shall also have jurisdiction upon application of the commissioner to enforce all orders of the commissioner under this subsection. The burden of proof shall be upon the appealing party to show that the order of the commissioner is invalid. An aggrieved person shall not be required to seek an order from the commission as a condition precedent to seeking any other remedy. The value of guaranteed savings may represent either all, or part of annual payments at the discretion of the agency. The guaranteed energy savings contract term for providing a guarantee, measurement and verification, maintenance, service and installment or lease payments shall not exceed 20 years. The division of capital asset management and maintenance, in concurrence with the state inspector general, shall promulgate regulations for the procurement of energy management services, including establishing safeguards to be included in guaranteed energy savings contracts. The regulations shall

require the submission, at least annually, of information as the commission of the division of capital asset management and maintenance and the state inspector general consider necessary in order to monitor the costs and benefits of contracts for energy management services.

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

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

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

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

Section 16. There shall be within the department of clean energy, a division of green communities. The purpose of said division is to assist the commonwealth's municipalities and other governmental bodies: reduce energy consumption and costs, reduce pollution, facilitate the development of renewable and other clean energy resources, and create local jobs related to the building of clean energy facilities and the installation of energy-efficient equipment. The division may also award grants to provide technical assistance to municipalities qualifying as a green community pursuant to this section. The director of the division shall be responsible for the administration and oversight of a green communities program as established herein, and shall, apply and disburse monies and revenues of the Massachusetts Renewable Energy Trust Fund, established pursuant to section 22 of chapter 21A.

(a) In establishing a green community certification, the division shall consider whether municipalities have undertaken any other initiatives to reduce energy consumption, promote energy conservation or promote the development of clean energy generating facilities including, but not limited to, the following: (i) entering into long-term contracts, as may be defined by the division, for the purchase of clean energy; (ii) establishing an energy use baseline inventory for municipal buildings, street and traffic lighting and putting in place a comprehensive plan to reduce said baseline; (iii) adopting a policy of purchasing only fuel efficient municipal vehicles whenever such vehicles are commercially available and practicable; (iv) adopting an ordinance or by-law requiring any new commercial and industrial real estate development projects to minimize the life-cycle cost of the facility by utilizing energy efficiency, water conservation, or other clean energy technologies; (v) adopting a policy instituting a comprehensive energy education program for residential users of electricity; and (vi) aligning local building codes with the state energy efficiency code established pursuant to chapter 143. The division shall promulgate such regulations as are necessary to implement this program.

(b) The division shall establish a green communities program. The purpose of said program shall be to provide financial assistance, in the form of grants and loans, to municipalities and other governmental bodies that qualify as green communities pursuant to this section, to finance 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; adoption of energy efficiency policies; and the siting and construction of clean energy projects on municipally owned land. The division may also award grants to provide technical assistance to municipalities applying to qualify as a green community pursuant to this section.

(c) In order to qualify as a green community a municipality shall: (i) file an application with the division in a form and manner to be prescribed by the division; and (ii) accept a designation as a qualifying clean energy community by the clean energy facility site screening committee and permit the construction of a minimum of 1 clean energy generating facility within the community on municipally or privately owned real property identified by the director as real property which could potentially be utilized to site clean energy generating facilities, clean energy research and development facilities, and clean energy manufacturing facilities pursuant to section 18; (iii) adopt an expedited application and permitting process pursuant to which clean energy generating facilities or clean energy research and development or manufacturing facilities may be sited within the municipality; provided, however, that said process shall not exceed 1 year from the date of initial application to the date of final approval; provided, further, that in lieu of adopting such an expedited application and permitting process a municipality may agree to transfer the right, without recourse to the municipality, to site clean energy generating facilities within the municipality to the energy facilities siting board established pursuant to section 64H of chapter 164; or (iv) agree to enter into a contract wherein the municipality shall purchase a fixed percentage of electricity consumed by municipally owned buildings, street and traffic lights from clean energy sources; provided, however, that the maximum percentage of clean energy generation required to satisfy this subsection shall not exceed 20 per cent of a municipality's total electric load as determined by the division.

(d) In determining the funding priority for municipalities qualifying as green communities pursuant to subsection (c), the director shall consider whether municipalities have undertaken any other initiatives to reduce energy consumption, promote energy conservation or promote the development of clean energy generating facilities including, but not limited to, the following: (1) entering into long-term contracts, as may defined by the director, for the purchase of clean energy to satisfy subsection (c); (2) establishing an energy use baseline inventory for municipal buildings, street and traffic lighting and putting in place a comprehensive plan to reduce said baseline; (3) adopting a policy of purchasing only fuel efficient municipal vehicles whenever such vehicles are commercially available and practicable; (4) adopting an ordinance or by-law requiring any new commercial and industrial real estate development projects to minimize the life-cycle cost of the facility by utilizing energy efficiency, water conservation, or other clean energy technologies; (5) adopting a policy instituting a comprehensive energy curriculum for use by the public schools within the municipality; (6) adopting a policy instituting a comprehensive energy education program for residential users of electricity; and (7) aligning local building codes with the state energy efficiency code established pursuant to chapter 143.

(e) The division shall establish general policy, guidelines and standards regarding energy conservation measures and projects; procurement of energy management services; installation of energy management systems; adoption of demand side reduction initiatives; adoption of energy efficiency policies; and the siting and construction of renewable energy projects on municipally owned land and shall administer the green communities program in accordance with this chapter. The director of the division shall be responsible for the administration and oversight of the green communities program as established herein, and shall, in consultation with the secretary, apply and disburse monies and revenues of Massachusetts Renewable Energy Trust, established pursuant to section 22 of chapter 21A, alternative compliance payment funds, collected pursuant to 225 CMR 14.08(4); and other funds as proscribed herein.

(f) Funding for the green communities program in any 1 fiscal year shall be: (1) available from the revenues generated annually by the Massachusetts Renewable Energy Trust Fund, established pursuant to section 22 of chapter 21A; (2) up to 100 per cent of the revenues generated annually by the alternative compliance payment funds, established pursuant to 225 CMR 14.08(4); and (3) other funds as proscribed herein.

(g) A municipality or other governmental body served by a municipal lighting plant exempt from section 22 of chapter 21A and sections 19 and 20 of chapter 25, shall not be eligible for designation as a green community pursuant to this section.

(h) The division shall establish rules, regulations and guidelines for the administration and enforcement of this section, including, but not limited to, establishing applicant criteria, application forms and procedures, and energy efficiency product requirements.

Section 17. The department shall design and implement a competitive bidding procedure for the procurement of electric generation from clean energy generating facilities on behalf of municipalities seeking assistance with said procurement pursuant to section 16; provided further, that any such competitive bids received shall include payment options with rates that remain uniform for a minimum period of 5 years; and provided further, that in lieu of designing and implementing a competitive bidding process as required by this section, the director may become a member of one or more programs organized and administered by the Massachusetts Health and Educational Facilities Authority or its subsidiary organization for the purpose of such competitive group purchasing of electricity.

Section 18. There shall be within the department of clean energy, a clean energy site screening committee. The committee shall consist of 7 members, the commissioner of the department of clean energy who shall serve as chair; the secretary of the executive office of transportation and construction or his designee; the secretary of the executive office of economic development or his designee; the secretary of the executive office of energy and environmental affairs or his designee; the commissioner of the division of capital asset management and maintenance or his designee; the director of the Massachusetts municipal association or his designee; and the chair of the board of directors of the Massachusetts association of regional planning agencies or his designee.

The committee shall develop a statewide list of public and private real property which could be utilized to site clean energy generating facilities, clean energy research and development facilities, and clean energy manufacturing facilities. In determining the suitability of sites to be

included on the statewide list the committee shall consider, without limitation, the energy capacity needs of the electric system, development and construction costs, the proximity of the site to the distribution and transmission system, the environmental impact of a project, the impact upon the public use and enjoyment of the potential site, the impact upon abutters to the potential site, the economic impact upon the host municipality and the region, and such other matters as the committee shall deem appropriate; provided, however, that notwithstanding any local zoning bylaw or ordinance to the contrary, if a clean energy generating facility other than a waste-to-energy facility is proposed in any district zoned for industrial use or on any real property designated and accepted pursuant to this section, the use shall be allowed as of right, subject to the imposition of reasonable conditions through a site plan review process.

The committee shall annually submit a statewide list of any public and privately owned real property which could be utilized to site clean energy generating facilities, clean energy research and development facilities, and clean energy manufacturing facilities to the secretary of energy and environmental affairs. The secretary shall provide written notification to the host municipality of any real property within its jurisdiction that has been identified as real property which could potentially be utilized to site clean energy generating facilities, clean energy research and development facilities, and clean energy manufacturing facilities pursuant to this chapter. Said notice shall be sent to the city manager in the case of a city under a Plan E form of government, the mayor and city council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the county commissioners, the regional planning agency, and the representatives to the general court representing said host municipality. The secretary shall set forth in such notice a description of the real property, including the identity of the owners of said real property, and a declaration that the real property is eligible for designation as a qualifying clean energy property. The host municipality shall, within 180 days from receipt of said notification, notify the secretary whether it will accept the designation of the real property as a qualifying clean energy property. A host municipality which accepts the designation of at least 1 parcel of real property identified as real property which could potentially be utilized to site clean energy generating facilities, clean energy research and development facilities, and clean energy manufacturing facilities shall, upon satisfying the requirements of section 16, qualify as a green community.

The committee shall, on or before December 31, annually submit a written report of its activities. Said report shall be submitted to the chair of the senate committee on ways and means, the chair of the house committee on ways and means, the chairs of the joint committee on telecommunications, utilities and energy, and the clerk of the senate and the clerk of the house of representatives.

SECTION 29. 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 "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 30. Section 1 of chapter 30B of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 97, the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 31. Section 4E of chapter 40J is hereby repealed.

SECTION 32. Section 1 of chapter 62 of the General Laws, as so appearing, is hereby amended by adding the following 2 paragraphs:-

(p) "Alternative fuel vehicle", a vehicle powered by alternative fuel and having the following attributes: the capability of operating only on an alternative fuel; original use commencing with the taxpayer; and acquisition by the taxpayer for use or lease, but not for resale.

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

SECTION 33. Part B of section 3 of said chapter 62, as so appearing, is hereby amended by inserting after paragraph 9 the following paragraph:-

(9½). For taxable years beginning on January 1, 2008, in the case of an individual who purchases a hybrid or alternative fuel vehicle there shall be a deduction in the amount of $2,000 for a single person, for a person who qualifies as a head of household under subsection (b) of section 2 of chapter 62 or a married couple in the taxable year in which the purchase is made. The department of revenue may require a proof of purchase to be submitted with a return in order to be eligible for the deduction.

SECTION 34. Chapter 63 of the General Laws is hereby amended by inserting after section 38T following section:-

Section 38U. (a) A credit of up to $300 or 15 per cent, whichever is less, of the aggregate cost of the purchase and installation of a solar water heating system shall be allowed per return against the taxes imposed by this chapter for the cost of the retail purchase and installation of a solar water heating system in a commercial building.

(b) The commissioner of revenue shall promulgate rules and regulations necessary for the implementation of this section. The rules and regulations shall include provisions to prevent the generation of multiple credits with respect to the same property.

(c) A credit allowed under this section for the purchase and installation of a solar water heating system in a commercial building between November 1, 2008 and March 31, 2009 may be applied for the taxable year 2008. The taxpayer may carry over and apply to the tax, in taxable year 2008, the portion of those credits which exceed the tax for taxable year 2009 subject to regulations by the commissioner of revenue.

SECTION 35. Section 221 of chapter 112 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the word "components", in lines 19 and 20, the following words:- , as well as home energy score.

SECTION 36. Section 94 of chapter 143 of the General Laws, as so appearing, is hereby amended by inserting after the word "ninety-six", in line 61,the following words:- and including the energy conservation code.

SECTION 37. Said section 94 of said chapter 143, as so appearing, is hereby further amended by adding the following paragraph:-

(m) To adopt, at least once every 3 years, the latest edition of the model energy conservation code, the International Energy Conservation Code, published by the International Code Council. No amendments to the Massachusetts energy conservation code shall be adopted that increase energy consumption in buildings. The board of building regulations and standards jointly with the department of clean energy shall adopt regulations to certify and train qualified energy code inspectors and require that all new construction and major renovations pass inspections by certified energy code inspectors demonstrating full compliance with the Massachusetts energy conservation code.

SECTION 38. Section 1 of chapter 164 of the General Laws, as so appearing, is hereby amended by inserting after the definition of "Articles of organization" the following definition:—

"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 pursuant to subsection (d) of section 1B, (ii) the failure of the retail customer to elect competitive supply from a supplier pursuant to said subsection (d) of said section 1B, or (iii) upon the expiration and the retail customers failure to renew a competitive supply contract pursuant to said subsection (d) of said section 1B or other means.

SECTION 39. Said section 1 of said chapter 164 of the General Laws, as so appearing, is hereby further amended by striking out the definition of "Default Service".

SECTION 40. Said chapter 164 is hereby further amended by striking out section 1 and inserting in place thereof the following section:

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

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

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

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

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

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

"Articles of organization", (i) the articles of organization of a corporation which were filed subsequent to October 1, 1973, (ii) any agreement of association, special act of incorporation, and other charter documents, including by-law provisions and stockholder votes in effect prior to October 1, 1973,, which, subsequent to that date, would be included in articles of organization, and all amendments thereto, effective prior to October 1, 1973, and (iii) any of the following amendments made or filed from time to time subsequent to October1, 1973:

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

(2) articles of amendment filed pursuant to section 8B;

(3) restated articles of organization filed pursuant to section 8C;

(4) certificates of confirmation of proceedings filed pursuant to section 8D;

(5) articles of consolidation or merger filed pursuant to section 102A;

(6) articles of dissolution filed pursuant to section 100 of chapter 156B;

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

"Clean energy", products or services that improve operational performance, productivity or efficiency, while reducing energy consumption, pollution, waste of natural resources, fossil fuel use or energy costs.

"Cogeneration facility", any electrical generating unit having a power production capacity which, together with any other facilities located at the same site, is not greater than thirty megawatts and which produces electric energy and steam or other form of useful energy utilized for industrial, commercial, heating or cooling purposes, and employs a fuel other than oil or gas as its primary

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

"Committee", the clean energy site screening committee established pursuant to section 4.

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

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

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

"Department", the department of public utilities.

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

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

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

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

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

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

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

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

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

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

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

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

conversions; replacement or modification of lighting fixtures; energy recovery systems; and, cogeneration systems.

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

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

"FERC", the federal energy regulatory commission.

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

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

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

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

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

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

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

"Mitigation", all actions or occurrences which reduce the amount of money that a distribution company seeks to collect through the transition charge, including those amounts resulting from both matters within the company's control and from matters not wholly within the company's control. Mitigation shall, in accordance with the provisions of section 1G, include, but not be limited to, the following: (1) sales of capacity, energy, ancillary services, reserves, and emission allowances from generating facilities that are wholly or partly owned by the company; (2) sales of capacity, energy, ancillary services, reserves, and emission allowances from generating facilities with which the company has a power purchase agreement; (3) adjustments to the company's minimum obligations under purchase power agreements that decrease such obligations, such as those that may be

obtained through contract buy-out or renegotiation; (4) residual value; (5) sales and voluntary write downs of company generation-related assets; (6) any market value in excess of net book value associated with the sale, lease, transfer, or other use of the assets of the company unrelated to the provision of transmission service or distribution service at regulated prices, including, but not limited to, rights-of-way, property, and intangible assets when the costs associated with the acquisition of those assets have been reflected in the company's rates for regulated service; provided, however, that the department of public utilities shall determine their market values based on the highest prices that such assets could reasonably realize after an open and competitive sale; and (7) any allowed refinancing of stranded assets or other debt obligations as provided by law.

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

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

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

"Renewable energy" or "renewables", either (i) resources whose common characteristic is that they are nondepletable or are naturally replenishable but flow-limited, or (ii) existing or emerging non-fossil fuel energy sources or technologies, which have significant potential for commercialization in New England and New York, and shall include the following: solar photovoltaic or solar thermal electric energy; wind energy; ocean thermal, wave, or tidal energy; geothermal; fuel cells; landfill gas; waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; naturally flowing water and hydroelectric; and low-emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel. The following technologies or fuels shall not be considered renewable energy supplies: coal, oil, natural gas except when used in fuel cells, and nuclear power.

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

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

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

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

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

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

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

"Steam distribution company," any person, firm, partnership, association or private corporation organized under the laws of the commonwealth for the purpose of operating any plant or equipment or facilities for the manufacture, production, transmission, furnishing or distribution of steam to or for the public for compensation within the commonwealth, and provided further, that steam distribution company shall not mean an entity producing or distributing steam exclusively on private property and solely for the entity's use or the use of the entity's tenant, and not for distribution or sale.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 41. Section 1E of said chapter 164, as so appearing, is hereby amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) Each distribution, transmission, and gas company shall file a report with the department by March 1 of each year comparing its performance during the previous calendar year to the department's service quality standards and any applicable national standards as may be adopted by the department. The department shall be authorized to levy a penalty against any distribution, transmission, or gas company which fails to meet the service quality standards in an amount up to and including the equivalent of 4 per cent of such company's transmission and distribution service for the previous calendar year.

SECTION 42. Section 1F of said chapter 164, as so appearing, is hereby amended by striking out, in line 90, the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 43. Subparagraph (i) of paragraph (4) of section 1F of said chapter 164, as so appearing, is hereby amended by striking out the second, third and fourth paragraphs.

SECTION 44. Said section 1F of said chapter 164, as so appearing, is hereby further amended by striking out subparagraph (ii).

SECTION 45. Said section 1F of said chapter 164, as so appearing, is hereby further amended by striking out subparagraph (iii) and inserting in place thereof the following subparagraph:-

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

SECTION 46. 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 47. Section 69G of said chapter 164, as so appearing, is hereby amended by inserting after the definition of "Board" the following definition:-

"Clean energy generating unit", any bulk electric generating unit, including associated buildings and structures and electric transmission lines, operating at a gross capacity of 1 megawatt or more, which generates all of its electricity from 1 or more of the following sources: solar photovoltaic and solar thermal energy; wind energy; geothermal energy; ocean thermal, wave, or tidal energy; fuel cells; landfill gas; naturally flowing water and hydroelectric; low emission advanced biomass power conversion technologies using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel storage and conversion technologies connected to qualifying generation projects, as well as combined heat and power facilities which burn only natural gas; and such other types of facilities as the secretary of the executive office of energy and environmental affairs may from time to time designate.

SECTION 48. Said section 69G of said chapter 164, as so appearing, is hereby further amended by striking out the definition of "Generating facility" and inserting in place thereof the following definition:-

"Generating facility", a clean energy generating unit located in a municipality which has transferred its authority to permit the siting of clean energy generating units within the municipality to the board pursuant to section 16 of chapter 25A and any generating unit designed for or capable of operating at a gross capacity of 100 megawatts or more, including associated buildings, ancillary structures, transmission and pipeline interconnections that are not otherwise facilities, and fuel storage facilities.

SECTION 49. Section 69H of said chapter 164, as so appearing, is hereby amended by striking out, in line 18, the words "division of energy resources" and inserting in place thereof the following words:- department of clean energy.

SECTION 50. Section 76D of said chapter 164, as so appearing, is hereby amended by inserting after the word "companies", in lines 1 to 2, line 14 , the third time it appears, and in line

20, the second time it appears, in each instance, the following words:- ,steam distribution companies.

SECTION 51. Said section 76D of said chapter 164, as so appearing, is hereby further amended by inserting after the word "company", in line 9, the following words:- ,steam distribution company.

SECTION 52. Said chapter 164 is hereby further amended by inserting after section 76D the following section:-

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

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

SECTION 53. Said chapter 164 is hereby further amended by striking out section 96, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

Section 96. Companies subject to this chapter and their holding companies may, notwithstanding any other provisions of this chapter or of any general or special law, consolidate or merge with 1 another, or may sell and convey their properties to another of such companies or to a wholesale generation company and such other company may purchase such properties, provided that such purchase, sale, consolidation or merger, and the terms thereof, have been approved, at meetings called therefore, 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 54. Said chapter 164 is hereby further amended by striking out section 115A, as so appearing, and inserting in place thereof the following section:—

Section 115A. (a) Each meter for measuring gas provided to a consumer by a gas company, or municipal lighting plant shall, not later than 7 years from the date of installation or replacement, be removed by said company or municipal lighting plant from the premises of the consumer and replaced with such a meter which has been newly tested, sealed and stamped in accordance with law.

(b) Any gas company or municipal lighting plant which violates any provision of this section, unless in the opinion of the department such violation is due to unavoidable cause, accident or lack of materials, shall forfeit $50 for each meter which is not removed and replaced as provided herein. Forfeitures incurred under this section shall not be included as expenses in connection with the establishment of rates by said companies. The department may promulgate rules and regulations for the administration and enforcement of this section.

SECTION 55. Section 116B of said chapter 164, as so appearing, is hereby amended by adding the following paragraph:-

Any gas company found by the department to have knowingly violated this section shall be subject to a fine of not less than $500 nor more than $1,000 for each violation. Penalties and fees incurred under this section shall not be included as expenses in connection with the establishment of rates by said company.

SECTION 56. Section 134 of said chapter 164, as so appearing, is hereby amended by striking out, in lines 31, 51 and 75, the words "division of energy resources" and inserting in place thereof, in each instance, the following words:- department of clean energy.

SECTION 57. Said section 134 of said chapter 164, as so appearing, is hereby further amended by striking out, in lines 45, 49, 56, 64, and in line 74, the words "standard offer" and inserting in place thereof, in each instance, the following words:- basic service

SECTION 58. Said chapter 164 is hereby further amended by adding the following 5 sections:-

Section 138. As used in sections 138 to 140, inclusive, the following words shall, unless the context otherwise requires, have the following meanings:-

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

not using solar or wind as its energy source will be the average monthly clearing price at the ISO-NE.

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

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

"Class II net metering facility", a Solar-net-metering facility or wind-net-metering facility that has a generating capacity of more than 60 kilowatts and not more than 1 megawatt.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The distribution portion of any Class I, Class II, or Class III net metering credits and distribution company delivery charges displaced by a Class I, Class II, or Class III net metering

facility shall be aggregated by the distribution company and billed to all customers on an annual basis through a uniform per kilowatt-hour surcharge or surcharges.

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

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

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

(f) The aggregate capacity of net metering shall not exceed 1 per cent of the distribution company's peak load. For the purpose of calculating the aggregate capacity, the capacity of a Solar net metering facility shall be eighty 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.

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 is neighborhood net metering facility is located, and have an ownership interest in the neighborhood net metering facility. The amount of the excess neighborhood net metering credits to be attributed to each such customer shall be determined by the allocation provided by the neighborhood net metering facility. Credits may be carried forward by such customers from month to month. Written notice of the identity of the customers so designated and the allocation of the credits to be attributed to such customers shall be in such form as the distribution company shall reasonably require.

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

Section 141. In all decisions or actions regarding rate designs, the department shall consider the impacts of such actions including new financial incentives on the successful development of

energy efficiency and on-site generation. Where the scale of on-site generation would have an impact on affordability for low-income customers, a fully compensating adjustment shall be made to the low-income rate discount.

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

SECTION 59. The General Laws are hereby further amended by inserting after chapter 164A the following chapter:-

Chapter 164B
REGULATION OF STEAM DISTRIBUTION COMPANIES

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

Section 2. Each steam distribution company shall file a certified copy of its certificate of incorporation and bylaws with the department. By March first of each year each company shall file a report on safety related matters as the department may specify, including but not limited to number, duration and causes of all steam leakage incidents, distribution system accidents and service outages, time elapsed between the incident and the return to service following a repair. The department is authorized to levy fines or penalties against any steam distribution company for failure to comply with regulations promulgated by the department. In determining the appropriateness of any fine or penalty, the department shall consider the seriousness of the violation and the good faith compliance efforts of the steam distribution company.

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

SECTION 60. Chapter 268A of the General Laws is hereby amended by striking out section 8B, as appearing in the 2006 Official Edition, and inserting thereof the following section:—

Section 8B. No member or employee of the department of public utilities and the department of clean energy, within 1 year after his service has ceased or terminated, be employed by, or lobby

said office on behalf of, any company or regulated industry over which said office had jurisdiction during the tenure of such member of the office.

SECTION 61. There is hereby established a commission which shall study the siting of energy facilities in the commonwealth. Said study shall include, but not be limited to, the following: (i) 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, so-called, for necessary permits or certificates or other appropriate streamlining of the permitting system; (ii) the expansion of such coordinated procedures to other energy facilities, if appropriate; (iii) 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; (iv) 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; (v) the development of coordinated procedures to encourage the reuse of existing industrial sites for the development of generating facilities; (vi) 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 pursuant to this act, in reviewing such applications; provided, that said 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 pursuant to this act; (vii) 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 said application is approved; and (viii) the possibility of requiring applicants to provide either (a) evidence that the proposed facility would employ the best available and most efficient technology to control and reduce water withdrawals, or (b) 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.

Said commission shall consist of the secretary of the executive office of energy and environmental affairs, or his designee, who shall serve as the chairman of said study commission; the commissioner of the department of environmental protection, or his designee; a member of the energy facilities siting board other than the secretary of energy and environmental affairs, who shall be selected to serve on said commission by the governor; the house and senate chairmen of the joint committee on telecommunications, utilities and energy; the house and senate chairmen of the joint committee economic development and emerging technologies; and 10 members to be appointed by the governor, 1 of whom shall be a representative of the Massachusetts Municipal Association, 1 of whom shall be a representative of the Massachusetts Association of Health Boards, 2 of whom shall be a representative of an environmental protection organization, 2 of whom shall be representatives of the electric industry, including one member of the electric generation industry and one member representing an electric utility, 1 of whom shall be a representative of the gas industry, 1 of whom shall represent residential ratepayers, and 2 of whom shall be recommended by the Massachusetts AFL-CIO. Said study commission 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 January 1, 2009.