

# HOUSE . . . . . No. 4568

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## The Commonwealth of Massachusetts

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The committee of conference on the disagreeing votes of the two branches with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2400) of the House Bill to promote energy diversity (House, No. 4385), reports, recommending passage of the accompanying bill (House, No. 4568). July 31, 2016.

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## The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
\_\_\_\_\_

An Act to promote energy diversity.

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

1           SECTION 1. The General Laws are hereby amended by inserting after chapter 23L the  
2 following chapter:-

3           Chapter 23M.

### 4           COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY

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

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8           “Agency”, the Massachusetts Development Finance Agency as established in chapter  
9 23G.

“Benefitted property owner”, an owner of qualifying commercial or industrial property who desires to install commercial energy improvements and who provides free and willing consent to the betterment assessment against the qualifying commercial or industrial property.

“Betterment assessment”, an assessment of a betterment on qualified commercial or industrial property in relation to commercial energy improvements established under the commercial sustainable energy program that has been duly assessed in accordance with chapter 80.

“Commercial energy improvements”, (1) any renovation or retrofitting of a qualifying commercial or industrial real property to reduce energy consumption or installation of renewable energy systems to serve qualifying commercial or industrial property, provided such renovation, retrofit or installation is permanently fixed to such qualifying commercial or industrial property, or (2) the construction of an extension of an existing natural gas distribution company line to qualifying commercial or industrial property to enable the qualifying commercial or industrial property to obtain natural gas distribution service to displace utilization of fuel oil, electricity or other conventional energy sources.

“Commercial or industrial property”, any real property other than a residential dwelling containing fewer than five dwelling units.

“Commercial PACE project”, with respect to a parcel of qualifying commercial or industrial property, (1) design, procurement, construction, installation and implementation of commercial energy improvements; (2) related energy audits; (3) renewable energy system feasibility studies; and (4) measurement and verification reports of the installation and effectiveness of such energy improvements.

“Commercial sustainable energy program”, a program that facilitates commercial PACE projects and utilizes the betterment assessments authorized by section 3 as the source of both the repayment of and collateral for the financing of commercial PACE projects.

“Department”, the department of energy resources as established in chapter 25A.

“Municipality” a city, town, county, the Devens Regional Enterprise Zone created by chapter 498 of acts of 1993 or the Southfield Redevelopment Authority created by chapter 301 of the acts of 1998.

“PACE”, Property assessed clean energy.

“PACE bonds”, bonds, notes or other evidence of indebtedness, in the form of revenue bonds and not general obligation bonds of the commonwealth or the agency, issued by the agency or the special purpose entity, related to the commercial sustainable energy program established by this chapter.

“Participating municipality”, a municipality that has determined to participate in a commercial sustainable energy program.

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53           “Qualifying commercial or industrial property”, any commercial or industrial property  
54 owned by any person or entity other than a municipality or other governmental entity, that meets  
55 the qualifications established for the commercial sustainable energy program in accordance with  
56 the program guidelines as established in subsection (c) of section 3 and in subsection (13) of  
57 section 6 of chapter 25A.

58

59           “Special purpose entity”, a partnership, limited partnership, association, corporation,  
60 limited liability company or other entity established and authorized by the agency to issue PACE  
61 bonds, subject to approval by the agency as provided by the agency in its resolution authorizing  
62 the special purpose entity to issue PACE bonds.

63

64           Section 2. Each municipality in the commonwealth shall have the option to participate in  
65 the commercial sustainable energy program as a participating municipality by a majority vote of  
66 the city or town council, by a majority vote of the board of selectmen or by resolution of its  
67 legislative body, as may be appropriate, pursuant to which the municipality shall assess, collect,  
68 remit and assign betterment assessments, in return for commercial energy improvements for a  
69 benefitted property owner located within such municipality and for costs reasonably incurred in  
70 performing such acts.

71

72           Section 3. (a)(1) The agency, in consultation with the department, shall establish a  
73   commercial sustainable energy program in the commonwealth, and in furtherance thereof, is  
74   authorized to issue PACE bonds, either directly or through a special purpose entity, for the  
75   purpose of financing all or a portion of the costs of the activities comprising one or more  
76   commercial PACE projects.

77  
78           (2) Upon the approval of a commercial PACE project by the department, the agency or  
79   the special purpose entity may issue PACE bonds. PACE bonds shall be issued in accordance  
80   with section 8 of chapter 23G; provided, however, that the agency or special purpose entity shall  
81   not be required to make the findings set forth in subsections (a) and (b) of said section 8 of said  
82   chapter 23G. PACE bonds issued in furtherance of this section shall not be subject to, or  
83   otherwise included in, the principal amount of debt obligations issued under section 29 of said  
84   chapter 23G. Such PACE bonds may be secured as to both principal and interest by a pledge of  
85   revenues to be derived from the commercial sustainable energy program, including revenues  
86   from betterment assessments on qualifying commercial or industrial property on which the  
87   commercial PACE projects being financed by the issuance of PACE bonds are levied, as well as  
88   any reserve funds or other credit enhancements created in connection with the commercial  
89   sustainable energy program.

90  
91           (b) The agency working in conjunction with the department, shall develop program  
92   guidelines governing the terms and conditions under which financing for commercial PACE  
93   projects may be made available to the commercial sustainable energy program, which shall

include standards to require that property owners undertake projects where the energy cost savings of the commercial energy improvements over the useful life of the improvements exceeds the costs of the improvements, including any financing costs and associated fees. The agency or special purpose entity:(1) shall provide information as requested by the department regarding the expected financing costs for commercial PACE projects; (2) may serve as an aggregating entity for the purpose of securing state or private third-party financing for commercial energy improvements pursuant to this section; (3) may establish a loan loss, liquidity reserve or credit enhancement program to support PACE bonds issued under this section; and (4) may use the services of one or more private, public or quasi-public third-party administrators to administer, provide support or obtain financing for commercial PACE projects under the commercial sustainable energy program.

(c) If a benefitted property owner requests financing from the agency or special purpose entity for commercial energy improvements under this section, the agency or special purpose entity shall:

(1) refer the project to the department for approval under the guidelines established by subsection (13) of section 6 of chapter 25A;

(2) upon confirmation of project approval by the department, evaluate the project for compliance with the financial underwriting guidelines established by the agency;

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116           (3) impose requirements and conditions on the financing in order to ensure timely  
117 repayment, including, but not limited to, procedures for placing a lien on a property as security  
118 for the repayment of the betterment assessment;

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120           (4) require that the property owner provide a copy of a contract duly executed by the  
121 contractor performing the commercial energy improvements;

122

123           (5) require that the property owner obtain consent from any existing mortgage holder of  
124 the property to the intent to finance such commercial energy improvements pursuant to this  
125 section; and

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127           (6) if the agency or special purpose entity approves financing, require the participating  
128 municipality to levy a betterment assessment in a manner consistent with this section and with  
129 chapter 80, insofar as such provisions may be applicable and consistent with this section, on the  
130 qualifying commercial or industrial property in a principal amount sufficient to pay the costs of  
131 the commercial energy improvements and any associated costs that the agency determines will  
132 benefit the qualifying commercial or industrial property, including costs of the agency or special  
133 purpose entity.

134



(d)(1) The agency or special purpose entity may enter into a financing and assessment agreement with the property owner of qualifying commercial or industrial property. The agency or special purpose entity may raise funds to supply the financing under such agreement by issuing PACE bonds. Upon execution of such agreement and immediately prior to making the funds, which may constitute all or a portion of the proceeds from the issuance of such PACE bonds, available to the property owner for the commercial PACE project under the agreement, the agency or special purpose entity shall notify the participating municipality and the participating municipality or its designee shall record the betterment assessment and lien on the qualifying commercial or industrial property.

(2) Prior to the final execution of the contract, the agency or special purpose entity shall disclose to the property owner, in written format, the costs associated with participating in the commercial sustainable energy program established by this section, including the effective interest rate of the betterment assessment, any fees charged by the agency or special purpose entity to administer the program any fees charged by third parties such as originators or other intermediaries, the estimated payment schedule, an explanation of the lien being placed on their property, and the implications of the betterment assessment being levied.

(e) Before the betterment assessment is made, the agency or special purpose entity shall set the term and amortization schedule, the fixed or variable rate of interest for the repayment of the betterment assessment amount, and any required closing fees and costs, and disclose this information to the participating property owner in writing. The amortization schedule shall

provide for an amortization period of no longer than the lesser of: (1) the useful life of the longest-lived of the commercial energy improvements comprising the commercial PACE project financed by such betterment assessment; or (2) 20 years. The interest rate, which may be supplemented with state or federal funding, shall be sufficient to pay the principal and interest and shall be calculated to include the agency's fees, financing and administrative costs of the commercial sustainable energy program, including delinquencies. The property owner shall acknowledge in writing receipt of the disclosure.

(f) When the agency or special purpose entity has authorized, but not issued, PACE bonds for commercial PACE projects and other costs of the commercial sustainable energy program, including interest costs and other costs related to the issuance of PACE bonds, the agency or special purpose entity shall require the participating municipality where the qualifying commercial or industrial property is located, to record the agreement between the agency or the special purpose entity and the property owner as a betterment pursuant to chapter 80, except that such betterment may apply to a single parcel of qualifying commercial or industrial property, and as a lien against the qualifying commercial or industrial property benefitted. Upon recording of said lien, the municipality shall notify the property owner, in writing, of the recording.

(g) Betterment assessments levied pursuant to this section and the interest, fees and any penalties thereon shall constitute a lien against the qualifying commercial or industrial real property until they are paid, notwithstanding the provisions of section 12 of chapter 80, and shall continue notwithstanding any alienation or conveyance of the qualifying commercial or

179 industrial real property by one property owner to a new property owner. A new property owner  
180 shall take title to the qualifying commercial or industrial property subject to the betterment  
181 assessment and related lien. The lien shall be levied and collected in the same manner as the  
182 property taxes of the participating municipality on real property, including, in the event of  
183 default or delinquency, with respect to any penalties, fees and remedies and lien priorities. Each  
184 lien may be continued, recorded and released upon repayment in full of the betterment  
185 assessment in the manner provided for property tax liens. Each lien, subject to the consent of  
186 existing mortgage holders, shall take precedence over all other liens or encumbrances, except a  
187 lien for taxes of the municipality on real property. To the extent betterment assessments are paid  
188 in installments and any such installment is not paid when due, the betterment assessment lien  
189 may be foreclosed to the extent of any unpaid installment payments and any penalties, interest  
190 and fees related thereto. In the event such betterment assessment lien is foreclosed, such lien  
191 shall survive the judgment of foreclosure to the extent of any unpaid installment payments of the  
192 betterment assessment secured by such lien that were not the subject of such judgment.

193

194 (h) Any participating municipality shall assign to the agency or special purpose entity any  
195 and all liens filed by the tax collector, as provided in the written agreement between the  
196 participating municipality and the agency or special purpose entity. The agency or special  
197 purpose entity may sell or assign, for consideration, any and all liens received from the  
198 participating municipality. The agency and the assignee shall negotiate the consideration  
199 received by the agency. The assignee shall have and possess the same powers and rights at law or  
200 in equity as the agency and the participating municipality and its tax collector would have had  
201 with regard to the precedence and priority of such lien, the accrual of interest and the fees and

expenses of collection. The assignee shall have the same rights to enforce such liens as any private party holding a lien on real property, including, but not limited to, foreclosure and a suit on the debt. The assignee shall recover costs and reasonable attorneys' fees incurred as a result of any foreclosure action or other legal proceeding brought pursuant to this section and directly related to the proceeding from those having title to the property subject to the proceedings. Such costs and fees may be collected by the assignee at any time after the assignee have made a demand for payment.

(i) The agency shall not be required to pay any taxes or assessments upon the property acquired or used by the agency under this section or upon the income derived therefrom. The PACE bonds issued under this section, their transfer and the income derived therefrom, including any profit made on the sale thereof, shall at all times be free of taxation within the commonwealth.

(j) The activities of the commercial sustainable energy program shall be reviewed in the 3-year planning process and annual reviews undertaken pursuant to section 21 of chapter 25.

(k) The agency shall establish rules and guidelines necessary to implement the purposes of the program, including procedures describing the application process, consumer disclosures and other protections, and criteria to be used in evaluating application for PACE bonds under this section.

SECTION 2. Section 6 of chapter 25A of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out clause (12) and inserting in place thereof the following 2 clauses:

(12) intervene and advocate on behalf of small commercial and industrial users before the department of public utilities in any dispute between such businesses and generation or distribution companies, as defined pursuant to section 1 of chapter 164; and

(13) plan, develop, oversee and operate the commercial sustainable energy program, with the Massachusetts Development Finance Agency, in accordance with the provisions of chapter 23M. In accordance with this section, the department shall approve each commercial PACE project prior to the issuance of a PACE bond under chapter 23M and in so doing shall consider whether the energy cost savings of the commercial energy improvements over the useful life of such improvements exceed the costs of such improvements.

SECTION 3. Section 11F½ of said chapter 25A, as so appearing, is hereby amended by inserting after the word “biofuel”, in line 16, the following words:- , waste-to-energy that is a component of conventional municipal solid waste plant technology in commercial use.

SECTION 4. Said section 11F½ of said chapter 25A, as so appearing, is hereby further amended by striking out, in line 24, the words “or (v)” and inserting in place thereof the following words:- (v) fuel cells; or (vi).

SECTION 5. Said section 11F½ of said chapter 25A, as so appearing, is hereby further amended by inserting after the word “energy”, in line 30, the following words:- or fuel cell technology.

SECTION 6. Said section 11F½ of said chapter 25A, as so appearing, is hereby further amended by inserting after the word “for”, in line 70, the following words:- fuel cells and.

SECTION 7. Said section 11F½ of said chapter 25A, as so appearing, is hereby further amended by striking out, in lines 73 and 74, the words “renewable thermal”.

SECTION 8. Section 1 of chapter 164 of the General Laws, as so appearing, is hereby amended by inserting after the definition of “Energy management services” the following definition:-

“Energy storage system”, a commercially available technology that is capable of absorbing energy, storing it for a period of time and thereafter dispatching the energy and which may be owned by an electric distribution company; provided, however, that an energy storage system shall: (i) reduce the emission of greenhouse gases; (ii) reduce demand for peak electrical generation; (iii) defer or substitute for an investment in generation, transmission or distribution assets; or (iv) improve the reliable operation of the electrical transmission or distribution grid; and provided further, that an energy storage system shall: (1) use mechanical, chemical or thermal processes to store energy that was generated for use at a later time; (2) store thermal energy for direct heating or cooling use at a later time in a manner that avoids the need to use electricity at that later time; (3) use mechanical, chemical or thermal processes to store energy generated from renewable resources for use at a later time; or (4) use mechanical, chemical or thermal processes to capture or harness waste electricity and to store the waste electricity generated from mechanical processes for delivery at a later time.

SECTION 9. Said section 1 of said chapter 164, as so appearing, is hereby further amended by inserting after the word “facility”, in line 197, the following words:- or an energy

266 storage system procured by a distribution company for support in delivering energy services to  
267 end users.

268 SECTION 10. Said chapter 164 is hereby further amended by inserting after section 139  
269 the following section:-

270 Section 139A. (a) For the purposes of this section, the following words shall have the  
271 following meanings unless the context clearly requires otherwise:-

272

273 “Small hydroelectric power net metering facility”, a facility with a nameplate capacity of  
274 2 megawatts or less, using water to generate electricity that is connected to a distribution  
275 company.

276 “Small hydro tariff”, the default service kilowatt-hour rate of the local distribution  
277 company as defined in section 1 that receives electricity from a small hydropower facility or an  
278 anaerobic digestion net metering facility.

279 (b) Notwithstanding any general or special law to the contrary, the department may  
280 require the electric distribution companies to amend the net metering tariff to create a program  
281 for small hydroelectric power net metering facilities in the commonwealth. An electric  
282 distribution company shall pay a small hydroelectric power net metering facility monthly for  
283 electricity it received from the facility based on the kilowatt hours of electricity that the  
284 distribution company received from the facility multiplied by the small hydro tariff. A  
285 participating small hydroelectric net metering facility shall notify a distribution company that it  
286 intends to deliver electricity pursuant to the small hydro tariff program and shall comply with the

distribution company's applicable reporting and interconnection requirements; provided, however that no more than 60 megawatts of small hydroelectric power aggregate capacity statewide shall be permitted to participate in the small hydroelectric power tariff program. The department shall determine an appropriate and proportionate method of allocating costs of small hydropower facilities to ensure that the costs of the program are shared collectively among all ratepayers of the distribution companies.

SECTION 11. Section 144 of said chapter 164, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word "leaks", in lines 37 and 39, each time it appears, the following words:- and grade 3 leaks identified as having a significant environmental impact.

SECTION 12. Chapter 169 of the acts of 2008 is hereby amended by inserting after section 83A, inserted by chapter 209 of the acts of 2012, the following 3 sections:-

Section 83B. For the purposes of this section and sections 83C and 83D, the following words shall have the following meanings, unless the context clearly requires otherwise:-

"Affiliated company", an affiliated company as defined in section 85 of chapter 164 of the General Laws.

"Clean energy generation", either: (i) firm service hydroelectric generation from hydroelectric generation alone; (ii) new Class I RPS eligible resources that are firmed up with firm service hydroelectric generation; or (iii) new Class I renewable portfolio standard eligible resources.



“Distribution company”, a distribution company as defined in section 1 of chapter 164 of the General Laws.

“Firm service hydroelectric generation”, hydroelectric generation provided without interruption for 1 or more discrete periods designated in a long-term contract, including but not limited to multiple hydroelectric run-of-the-river generation units managed in a portfolio that creates firm service through the diversity of multiple units.

“Long-term contract”, a contract for a period of 15 to 20 years for offshore wind energy generation pursuant to section 83C or for clean energy generation pursuant to section 83D.

“New Class I renewable portfolio standard eligible resources”, Class I renewable energy generating sources as defined in section 11F of chapter 25A of the General Laws that have not commenced commercial operation prior to the date of execution of a long-term contract or that represent the net increase from incremental new generating capacity at an existing facility after the date of execution of a long-term contract.

“Offshore wind developer”, a provider of electricity developed from an offshore wind energy generation project that is located on the Outer Continental Shelf and for which no turbine is located within 10 miles of any inhabited area.

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329           “Offshore wind energy generation”, offshore electric generating resources derived from  
330 wind that: (1) are Class I renewable energy generating sources, as defined in section 11F of  
331 chapter 25A of the General Laws; (2) have a commercial operations date on or after January 1,  
332 2018, that has been verified by the department of energy resources; and (3) operate in a  
333 designated wind energy area for which an initial federal lease was issued on a competitive basis  
334 after January 1, 2012.

335

336           Section 83C. (a) In order to facilitate the financing of offshore wind energy generation  
337 resources in the commonwealth, not later than June 30, 2017, every distribution company shall  
338 jointly and competitively solicit proposals for offshore wind energy generation; and, provided,  
339 that reasonable proposals have been received, shall enter into cost-effective long-term contracts.  
340 Long-term contracts executed pursuant to this section shall be subject to the approval of the  
341 department of public utilities and shall be apportioned among the distribution companies.

342

343           (b) The timetable and method for solicitations of long-term contracts shall be proposed  
344 jointly by the distribution companies and the department of energy resources using a competitive  
345 bidding process, and shall be subject to review and approval by the department of public utilities.  
346 The distribution companies, in coordination with the department of energy resources, shall  
347 consult with the attorney general regarding the choice of solicitation methods. A solicitation  
348 may be coordinated and issued jointly with other New England states or entities designated by  
349 those states. The distribution companies may conduct 1 or more competitive solicitations through

a staggered procurement schedule developed by the distribution companies and the department of energy resources; provided, that the schedule shall ensure that the distribution companies enter into cost-effective long-term contracts for offshore wind energy generation equal to approximately 1,600 megawatts of aggregate nameplate capacity not later than June 30, 2027; and provided further, that individual solicitations shall seek proposals for no less than 400 megawatts of aggregate nameplate capacity of offshore wind energy generation resources. A staggered procurement schedule developed by the department of energy resources, if applicable, shall specify that a subsequent solicitation shall occur within 24 months of a previous solicitation; provided, however, that the department of public utilities shall not approve a long-term contract that results from a subsequent solicitation and procurement period if the levelized price per megawatt hour, plus associated transmission costs, is greater than or equal to the levelized price per megawatt hour plus transmission costs that resulted from the previous procurement. Proposals received pursuant to a solicitation under this section shall be subject to review by the department of energy resources. If the department of energy resources, in consultation with the distribution companies and the independent evaluator, determines that reasonable proposals were not received pursuant to a solicitation, the department may terminate the solicitation, and may require additional solicitations to fulfill the requirements of this section.

(c) In developing proposed long-term contracts, the distribution companies shall consider long-term contracts for renewable energy certificates for energy and for a combination of both renewable energy certificates and energy. A distribution company may decline to pursue a proposal if the proposal's terms and conditions would require the contract obligation to place an unreasonable burden on the distribution company's balance sheet; provided, however, that the

distribution company shall take all reasonable actions to structure the contracts, pricing or administration of the products purchased under this section in order to prevent or mitigate an impact on the balance sheet or income statement of the distribution company or its parent company, subject to the approval of the department of public utilities; provided further, that mitigation shall not increase costs to ratepayers. If a distribution company deems all proposals to be unreasonable, the distribution company shall, within 20 days of the date of its decision, submit a filing to the department of public utilities. The filing shall include, in the form and detail prescribed by the department of public utilities, documentation supporting the distribution company's decision to decline the proposals. Following a distribution company's filing, and within 4 months of the date of filing, the department of public utilities shall approve or reject the distribution company's decision and may order the distribution company to reconsider any proposal. If distribution companies are unable to agree on a winning bid following a solicitation under this section, the matter shall be submitted to the department of energy resources which shall, in consultation with the independent evaluator, issue a final, binding determination of the winning bid; provided, that the final contract executed shall be subject to review by the department of public utilities. The department of energy resources may require additional solicitations to fulfill the requirements of this section.

(d) The department of public utilities shall promulgate regulations consistent with this section. The regulations shall: (1) allow offshore wind developers of offshore wind energy generation to submit proposals for long-term contracts consistent with this section; (2) require that a proposed long-term contract executed by the distribution companies under a proposal be filed with, and approved by, the department of public utilities before becoming effective; (3)

provide for an annual remuneration for the contracting distribution company up to 2.75 per cent of the annual payments under the contract to compensate the company for accepting the financial obligation of the long-term contract, such provision to be acted upon by the department of public utilities at the time of contract approval; (4) require associated transmission costs to be incorporated into a proposal; provided that, to the extent there are transmission costs included in a bid, the department of public utilities may authorize or require the contracting parties to seek recovery of such transmission costs of the project through federal transmission rates, consistent with policies and tariffs of the Federal Energy Regulatory Commission, to the extent the department finds such recovery is in the public interest; and (5) require that offshore wind energy generating resources to be used by a developer under the proposal meet the following criteria: (i) provide enhanced electricity reliability; (ii) contribute to reducing winter electricity price spikes; (iii) are cost effective to electric ratepayers in the commonwealth over the term of the contract, taking into consideration potential economic and environmental benefits to the ratepayers; (iv) avoid line loss and mitigate transmission costs to the extent possible and ensure that transmission cost overruns, if any, are not borne by ratepayers; (v) adequately demonstrate project viability in a commercially reasonable timeframe; (vi) allow offshore wind energy generation resources to be paired with energy storage systems; (vii) where possible, mitigate any environmental impacts; and (viii) where feasible, create and foster employment and economic development in the commonwealth. The department of energy resources shall give preference to proposals that demonstrate a benefit to low-income ratepayers in the commonwealth, without adding cost to the project.

(e) A proposed long-term contract shall be subject to the review and approval of the department of public utilities. As part of its approval process, the department of public utilities shall consider recommendations by the attorney general, which shall be submitted to the department of public utilities within 45 days following the filing of a proposed long-term contract with the department of public utilities. The department of public utilities shall consider the potential costs and benefits of the proposed long-term contract and shall approve a proposed long-term contract if the department finds that the proposed contract is a cost-effective mechanism for procuring reliable renewable energy on a long-term basis, taking into account the factors outlined in this section. A distribution company shall be entitled to cost recovery of payments made under a long-term contract approved under this section.

(f) The department of energy resources and the attorney general shall jointly select, and the department of energy resources shall contract with, an independent evaluator to monitor and report on the solicitation and bid selection process in order to assist the department of energy resources in determining whether a proposal received pursuant to subsection (b) is reasonable and to assist the department of public utilities in its consideration of long-term contracts filed for approval. To ensure an open, fair and transparent solicitation and bid selection process that is not unduly influenced by an affiliated company, the independent evaluator shall: (1) issue a report to the department of public utilities analyzing the timetable and method of solicitation and the solicitation process implemented by the distribution companies and the department of energy resources under subsection (b) and include recommendations, if any, for improving the process; and (2) upon the opening of an investigation by the department of public utilities into a proposed long-term contract for a winning bid proposal, file a report with the department of public utilities that summarizes and analyzes the solicitation and the bid selection process, and provide the

independent evaluator's assessment of whether all bids were evaluated in a fair and objective manner. The independent evaluator shall have access to the information and data related to the competitive solicitation and bid selection process that is necessary to fulfill the purposes of this subsection; provided, however, that the independent evaluator shall ensure that all proprietary information remains confidential. The department of public utilities shall consider the findings of the independent evaluator and may adopt recommendations made by the independent evaluator as a condition for approval. If the independent evaluator concludes in the findings that the solicitation and bid selection of a long-term contract was not fair and objective and that the process was substantially prejudiced as a result, the department of public utilities shall reject the winning bid proposal.

(g) The distribution companies shall each enter into a contract with the winning bidders for their apportioned share of the market products being purchased from the project. The apportioned share shall be calculated and based upon the total energy demand from all distribution customers in each service territory of the distribution companies.

(h) A distribution company may elect to use any energy purchased under such contracts for sale to its customers and may elect to retain renewable energy certificates to meet the applicable annual renewable portfolio standard requirements under said section 11F of said chapter 25A. If the energy and renewable energy certificates are not so used, the distribution companies shall sell the purchased energy into the wholesale market and, provided that the department of energy resources has not notified the distribution company that the renewable

energy certificates should be retained to facilitate reaching emission reduction targets pursuant to chapter 298 of the acts of 2008 or chapter 21N of the General Laws, shall sell the purchased renewable energy certificates to minimize the costs to ratepayers under the contract; provided, however, that the department of energy resources shall conduct periodic reviews to determine the impact on the energy and renewable energy certificate markets of the disposition of energy and renewable energy certificates under this section. The department of energy resources may issue reports recommending legislative changes if it determines that said disposition of energy and renewable energy certificates is adversely affecting the energy and renewable energy certificate markets.

(i) If a distribution company sells the purchased energy into the wholesale market and sells the renewable energy certificates, the distribution company shall net the cost of payments made to projects under the long-term contracts against the net proceeds obtained from the sale of energy and renewable energy certificates, and the difference shall be credited or charged to all distribution customers through a uniform fully reconciling annual factor in distribution rates, subject to review and approval of the department of public utilities.

(j) A long-term contract procured under this section shall utilize an appropriate tracking system to ensure a unit specific accounting of the delivery of clean energy, to enable the department of environmental protection, in consultation with the department of energy resources, to accurately measure progress in achieving the commonwealth's goals under chapter 298 of the acts of 2008 or chapter 21N of the General Laws.



(k) The department of energy resources and the department of public utilities may jointly develop requirements for a bond or other security to ensure performance with the requirements of this section.

(l) The department of energy resources may promulgate regulations necessary to implement this section.

(m) If this section is subjected to a legal challenge, the department of public utilities may suspend the applicability of the challenged provision during the pendency of the action until a final resolution, including any appeals, is obtained and shall issue an order and take other actions as are necessary to ensure that the provisions not subject to the challenge are implemented expeditiously to achieve the public purposes of this section.

Section 83D. (a) In order to facilitate the financing of clean energy generation resources, not later than April 1, 2017, every distribution company shall jointly and competitively solicit proposals for clean energy generation and, provided that reasonable proposals have been received, shall enter into cost-effective long-term contracts for clean energy generation for an annual amount of electricity equal to approximately 9,450,000 megawatts-hours. Long-term contracts executed pursuant to this section shall be subject to the approval of the department of public utilities and shall be apportioned among the distribution companies under this section.

(b) The timetable and method for solicitation of long-term contracts shall be proposed jointly by the distribution companies and the department of energy resources and shall be subject

to review and approval by the department of public utilities. The distribution companies, in coordination with the department of energy resources, shall consult with the attorney general's office regarding the choice of solicitation method. A solicitation may be coordinated and issued jointly with other New England states or entities designated by those states. The distribution companies may conduct 1 or more competitive solicitations through a staggered procurement schedule developed by the distribution companies and the department of energy resources; provided, that the schedule shall ensure that the distribution companies enter into cost-effective long-term contracts for clean energy generation equal to approximately 9,450,000 megawatt-hours by December 31, 2022. Proposals received pursuant to a solicitation under this section shall be subject to review by the department of energy resources. If the department of energy resources, in consultation with the distribution companies and the independent evaluator, determines that reasonable proposals were not received pursuant to a solicitation, the department may terminate the solicitation, and may require additional solicitations to fulfill the requirements of this section.

(c) In developing proposed long-term contracts, the distribution companies shall consider long-term contracts for renewable energy certificates for energy and for a combination of both renewable energy certificates and energy, if applicable. A distribution company may decline to pursue a proposal if the proposal's terms and conditions would require the contract obligation to place an unreasonable burden on the distribution company's balance sheet; provided, however, that the distribution company shall take all reasonable actions to structure its contracts pricing or administration of the products purchased to mitigate impacts on the balance sheet or income statement of the distribution company or its parent company, subject to the approval of the department of public utilities; provided further, that mitigation shall not increase costs to

ratepayers. If a distribution company deems all proposals to be unreasonable, the distribution company shall, within 20 days of the date of its decision, submit a filing to the department of public utilities. The filing shall include, in the form and detail prescribed by the department of public utilities, documentation supporting the distribution company's decision to decline the proposals. Following a distribution company's filing, and within 4 months of the date of filing, the department of public utilities shall approve or reject the distribution company's decision and may order the distribution company to reconsider any proposal. If distribution companies are unable to agree on a winning bid following a solicitation under this section, the matter shall be submitted to the department of energy resources which shall, in consultation with the independent evaluator, issue a final, binding determination of the winning bid; provided that the final contract executed shall be subject to review by the department of public utilities. The department of energy resources may require additional solicitations to fulfill the requirements of this section.

(d) The department of public utilities shall promulgate regulations consistent with this section. The regulations shall: (1) allow developers of clean energy generation resources to submit proposals for long-term contracts; (2) require that contracts executed by the distribution companies under such proposals are filed with, and approved by, the department of public utilities before they become effective; (3) provide for an annual remuneration for the contracting distribution company up to 2.75 per cent of the annual payments under the contract to compensate the company for accepting the financial obligation of the long-term contract, such provision to be acted upon by the department of public utilities at the time of contract approval; (4) require associated transmission costs to be incorporated into a proposal; provided that, to the

552 extent there are transmission costs included in a bid, the department of public utilities may  
553 authorize or require the relevant parties to seek recovery of such transmission costs of the project  
554 through federal transmission rates, consistent with policies and tariffs of the Federal Energy  
555 Regulatory Commission, to the extent the department finds such recovery is in the public  
556 interest; and (5) require that the clean energy resources to be used by a developer under the  
557 proposal meet the following criteria: (i) provide enhanced electricity reliability within the  
558 commonwealth; (ii) contribute to reducing winter electricity price spikes; (iii) are cost effective  
559 to electric ratepayers in the commonwealth over the term of the contract taking into  
560 consideration potential economic and environmental benefits to the ratepayers; (iv) avoid line  
561 loss and mitigate transmission costs to the extent possible and ensure that transmission cost  
562 overruns, if any, are not borne by ratepayers; (v) allow long-term contracts for clean energy  
563 generation resources to be paired with energy storage systems; (vi) guarantee energy delivery in  
564 winter months; (vii) adequately demonstrate project viability in a commercially reasonable  
565 timeframe; and (viii) where feasible, create and foster employment and economic development  
566 in the commonwealth. The department of energy resources shall give preference to proposals  
567 that combine new Class I renewable portfolio eligible resources and firm hydroelectric  
568 generation and demonstrate a benefit to low-income ratepayers in the commonwealth without  
569 adding cost to the project.

570 (e) A proposed long-term contract shall be subject to the review and approval of the  
571 department of public utilities. As part of its approval process, the department of public utilities  
572 shall consider recommendations by the attorney general, which shall be submitted to the  
573 department of public utilities within 45 days following the filing of such contracts with the  
574 department of public utilities. The department of public utilities shall consider both the potential

costs and benefits of such contracts and shall approve a contract only upon a finding that it is a cost effective mechanism for procuring low cost renewable energy on a long-term basis taking into account the factors outlined in this section.

(f) The department of energy resources and the attorney general shall jointly select, and the department of energy resources shall contract with, an independent evaluator to monitor and report on the solicitation and bid selection process in order to assist the department of energy resources in determining whether a proposal received pursuant to subsection (b) is reasonable and to assist the department of public utilities in its consideration of long-term contracts or filed for approval. To ensure an open, fair and transparent solicitation and bid selection process that is not unduly influenced by an affiliated company, the independent evaluator shall: (1) issue a report to the department of public utilities analyzing the timetable and method of solicitation and the solicitation process implemented by the distribution companies and the department of energy resources under subsection (b) and include recommendations, if any, for improving the process; and (2) upon the opening of an investigation by the department of public utilities into a proposed long-term contract for a winning bid proposal, file a report with the department of public utilities summarizing and analyzing the solicitation and the bid selection process, and providing its independent assessment of whether all bids were evaluated in a fair and non-discriminatory manner . The independent evaluator shall have access to all information and data related to the competitive solicitation and bid selection process necessary to fulfill the purposes of this subsection, but shall ensure all proprietary information remains confidential. The department of public utilities shall consider the findings of the independent evaluator and may adopt recommendations made by the independent evaluator as a condition for approval. If the

independent evaluator concludes in the findings that the solicitation and bid selection of a long-term contract was not fair and objective and that the process was substantially prejudiced as a result, the department of public utilities shall reject the contract.

(g) The distribution companies shall each enter into a contract with the winning bidders for their apportioned share of the market products being purchased from the project. The apportioned share shall be calculated and based upon the total energy demand from all distribution customers in each service territory of the distribution companies.

(h) An electric distribution company may elect to use any energy purchased under such contracts for resale to its customers, and may elect to retain renewable energy certificates to meet the applicable annual renewable portfolio standard requirements under said section 11F of said chapter 25A. If the energy and renewable energy certificates are not so used, such companies shall sell such purchased energy into the wholesale market and shall sell such purchased renewable energy certificates attributed to Class I renewable portfolio standard eligible resources to minimize the costs to ratepayers under the contract; provided further, that a distribution company shall retain renewable energy certificates that are not attributed to Class I renewable portfolio standard eligible resources. The department of energy resources shall conduct periodic reviews to determine the impact on the energy and renewable energy certificate markets of the disposition of energy and renewable energy certificates under this section and may issue reports recommending legislative changes if it determines that actions are being taken that will adversely affect the energy and renewable energy certificate markets.

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621           (i) If a distribution company sells the purchased energy into the wholesale spot market  
622 and auctions the renewable energy certificates as described in this section, the distribution  
623 company shall net the cost of payments made to projects under the long-term contracts against  
624 the net proceeds obtained from the sale of energy and renewable energy certificates, and the  
625 difference shall be credited or charged to all distribution customers through a uniform fully  
626 reconciling annual factor in distribution rates, subject to review and approval of the department  
627 of public utilities.

628

629           (j) A long-term contract procured under this section shall utilize an appropriate tracking  
630 system to ensure a unit specific accounting of the delivery of clean energy, to enable the  
631 department of environmental protection, in consultation with the department of energy resources,  
632 to accurately measure progress in achieving the commonwealth's goals under chapter 298 of the  
633 acts of 2008 or chapter 21N of the General Laws.

634           (k) The department of energy resources and the department of public utilities may jointly  
635 develop requirements for a bond or other security to ensure performance with requirements  
636 under this section.

637           (l) The department of energy resources may promulgate regulations necessary to  
638 implement this section.

639           (m) If this section is subjected to a legal challenge, the department of public utilities may  
640 suspend the applicability of the challenged provision during the pendency of the action until a

641 final resolution, including any appeals, is obtained and shall issue an order and take other actions  
642 as are necessary to ensure that the provisions not subject to the challenge are implemented  
643 expeditiously to achieve the public purposes of this section.

644 SECTION 13. The department of public utilities, in consultation with the department of  
645 environmental protection, shall open an investigation to establish specific criteria for the  
646 identification of the environmental impact of gas leaks that have been classified as Grade 3  
647 pursuant to section 144 of chapter 164 of the General Laws and to establish a plan to repair leaks  
648 that are determined to have a significant environmental impact. The department, in consultation  
649 with the department of environmental protection, shall promulgate rules regarding the timeline  
650 and acceptable methods for remediation and repair of a Grade 3 leak determined to have  
651 significant environmental impact; provided, however, that no rule shall abrogate or impair a  
652 provision existing in a collective bargaining agreement relative to the timeline and methods for  
653 remediation and repair of grade 3 leaks during the terms of such agreement. The department of  
654 public utilities shall provide for the recovery of expenses incurred for repairs as part of the most  
655 cost-effective timeline for repairs under a plan submitted under section 145 of chapter 164 of the  
656 General Laws, without a reduction to the recovery for eligible pipe replacement.

657 SECTION 14. (a) There shall be created a nuclear decommissioning citizens advisory  
658 panel which shall consist of the following members or their designees: the secretary of health  
659 and human services, who shall serve ex officio; the secretary of energy and environmental  
660 affairs, who shall serve ex officio; the commissioner public utilities, who shall serve ex officio;  
661 the secretary of housing and economic development, who shall serve ex officio; the director of  
662 the Massachusetts Emergency Management Agency; 1 member from the Plymouth Nuclear  
663 Matters Committee as appointed by the Plymouth Board of Selectmen; 1 member from



664 Massachusetts Department of Public Health Radiological Control Program appointed by the  
665 Bureau of Environmental Health; 1 representative of the Old Colony Planning Council or  
666 designee, selected by the Council; 2 representatives of the Town of Plymouth as selected by the  
667 Plymouth Board of Selectmen; 2 members appointed by the Governor; 2 members appointed by  
668 the Speaker of the House; 1 member appointed by the minority leader of the house of  
669 representatives; 2 members appointed by the President of the Senate; 1 member as appointed by  
670 the minority leader or the senate; 2 representatives of the Pilgrim Nuclear Power Station, also  
671 known in this section as PNPS or Station, as selected by the owner of the station; and a  
672 representative of the Utility Workers Union of America, UWUA, Local 369 selected by the  
673 UWUA who shall be a present or former employee at the PNPS.

674 (b) Each appointing authority initially shall appoint a member for a 3-year term and a  
675 member for a 4-year term. Subsequent appointments under this subdivision shall be for terms of  
676 4 years. Ex officio members shall serve for the duration of their time in office or until a  
677 successor has been appointed.

678 (c) The commissioner of public utilities shall serve as the chair until the panel elects a  
679 chair or co-chairs under subsection (d).

680 (d) The panel annually shall elect a chair or co-chairs, and a vice chair, for 1-year terms  
681 commencing with its first meeting following the effective date of this section.

682 (e) A majority of the panel's members shall constitute a quorum. The panel shall act only  
683 by vote of a majority of its entire membership and only at meetings called by the chair or a co-  
684 chair or by any 5 of the members. The person or persons calling the meeting shall provide  
685 adequate notice to all its members.

686 (f) Members of the panel who are not ex officio members, employees of the  
687 Commonwealth of Massachusetts, representatives of the PNPS, or members representing towns  
688 outside Massachusetts, and who are not otherwise compensated or reimbursed for their  
689 attendance shall be entitled to \$50 per diem and their necessary and actual expenses..

690 (g) The executive office of energy and environmental affairs shall furnish administrative  
691 support for the panel.

692 (h) The chair shall: (1) manage the provision of administrative support to the panel,  
693 including scheduling meetings and securing meeting locations, providing public notice of  
694 meetings, producing minutes of meetings, and assisting in the compilation and production of the  
695 panel's annual report; (2) keep the panel informed of the status of matters within the jurisdiction  
696 of the panel; (3) notify members of the panel in a timely manner upon receipt of information  
697 relating to matters within the jurisdiction of the panel; (4) upon request, provide to all members  
698 of the panel all relevant information within the control of the department of public utilities  
699 relating to subjects within the scope of the duties of the panel; (5) provide workshops or training  
700 for panel members as may be appropriate; and (6) hire experts, contract for services, and provide  
701 for materials and other reasonable and necessary expenses of the panel as the commissioner may  
702 consider appropriate on request of the panel from time to time.

703 (i) The Panel shall serve in an advisory capacity only and shall not have authority to  
704 direct decommissioning of the PNPS. The duties of the panel shall be: (1) to commence public  
705 meetings beginning on or about June 1, 2017, at a frequency of quarterly until the shutdown of  
706 the Pilgrim Nuclear Power Station (PNPS) for the purpose of discussing issues related to  
707 decommissioning planning activities; (2) to hold a minimum of four public meetings each year

for the purpose of discussing issues relating to the progress of decommissioning of the PNPS beginning on or about June 1, 2019, or when the PNPS permanently ceases power operations; provided that the panel may hold additional meetings; (3) to advise the governor, the general court, the agencies of the commonwealth, and the public on issues related to the decommissioning of the PNPS, with a written report being provided annually to the governor and to the energy committees of the General Court; (4) to serve as a conduit for public information and education on and to encourage community involvement in matters related to the decommissioning of the PNPS and to receive written reports and presentations on the decommissioning of the Station at its regular meetings; (5) to periodically receive reports on the Decommissioning Trust Fund and other funds associated with decommissioning of the PNPS, including fund balances, expenditures made, and reimbursements received; (6) to receive reports regarding the decommissioning plans for the PNPS, including any site assessments and post-shutdown decommissioning assessment reports; provide a forum for receiving public comment on these plans and reports; and to provide comment on these plans and reports as the panel may consider appropriate to state agencies and the owner of the PNPS and in the annual report described in clause (3).

SECTION 15. (a) On or before December 31, 2016, the department of energy resources shall determine whether to set appropriate targets for electric companies to procure viable and cost-effective energy storage systems to be achieved by January 1, 2020. As part of this decision, the department may consider a variety of policies to encourage the cost-effective deployment of energy storage systems, including the refinement of existing procurement methods to properly value energy storage systems, the use of alternative compliance payments to develop pilot programs and the use of energy efficiency funds under section 19 of chapter 25 of the General

Laws if the department determines that the energy storage system installed at a customer's premises provides sustainable peak load reductions on either the electric or gas distribution systems and is otherwise consistent with section 11G of chapter 25A of the General Laws.

(b) The department shall adopt the procurement targets, if determined to be appropriate under subsection (a), by July 1, 2017. The department shall reevaluate the procurement targets not less than once every 3 years.

(c) Not later than January 1, 2020, each electric company entity shall submit a report to the department of energy resources demonstrating that it has complied with the energy storage system procurement targets and policies adopted by the department pursuant to this section.

SECTION 16. Notwithstanding any general or special law to the contrary, the department of energy resources may establish a carbon reduction research center. The carbon reduction research center shall be established to advance the Commonwealth's carbon reduction goals. The carbon reduction research center may include, but not be limited to, any of the following research initiatives: fuel cells; energy storage technology; residential property assessed clean energy programming; commercial property assessed clean energy programming; increased efficiency of existing small domestic energy production; and increased efficiency of and cleaner use of traditional fossil based fuels. The carbon reduction research center shall be located upon a campus within the University of Massachusetts, as defined by section 1 of chapter 75 of the General Laws, that meets the following criteria: (1) located within a gateway city; (2) located

752 near the Emerging Technologies and Innovation Center; and (3) has access to academic  
753 resources necessary for civil, environmental, and nuclear engineering.

754 SECTION 17. Waste-to-energy shall be eligible under section 3 regardless of the  
755 commercial operation date of the waste-to-energy facility; provided, however, that the facility  
756 shall have been in operation as of January 1, 2016.