MASSACHUSETTS MUNICIPAL ASSOCIATION

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March 1, 2012

The Honorable Brian Dempsey
Chairman, House Committee on Ways and Means
State House Room 243
Boston, MA 02133

RE: House Bill 3896

Dear Chairman Dempsey,

On behalf of the cities and towns of the Commonwealth, the Massachusetts Municipal Association strongly urges your favorable consideration of **House Bill 3896**, *An Act Relative to the Establishment of Municipal Lighting Authorities*, with three key changes. We urge you to make three specific amendments during the Ways and Means Committee's deliberations to strengthen the legislation and make it workable for cities and towns. The bill is a redrafted version of House Bill 869, which encourages the formation of municipally-owned electric utilities in order to provide choice and competitive electricity service to the ratepayers of Massachusetts.

The poor performance, lack of communication, and lack of response from investor-owned utilities (IOUs) in the aftermath of several storms has forced our members to file formal complaints with the Department of Public Utilities. For example, the City of Quincy and the Towns of Foxborough, Duxbury, Halifax, Hanover, Harwich, Marshfield, Salisbury and Stoneham, just to name a few, have sent letters to the DPU outlining their complaints about the poor response and service of either National Grid or NStar. Articles and editorials have appeared in the *Boston Globe*, *Patriot Ledger*, *Fall River Herald News*, *Worcester Telegram* and other newspapers highlighting the superior performance of Municipal Lighting Authorities ("munis"), which were able to restore power far more quickly than their investor-owned counterparts.

Municipal Lighting Authorities have demonstrated that they are more thorough in their maintenance, their employees are more responsive and proactive in providing service, and they have a much better understanding of the needs of their communities than the investor-owned utilities. Municipal Lighting Authorities are owned and operated by the ratepayers and must be responsive to the ratepayers. Contractors hired by Municipal Lighting Authorities are also local and are therefore able to quickly manage incidents such as downed trees and powerlines. On the other hand, investor-owned utilities often have to bring in crews from as far away as Canada.

In addition to superior performance, electricity rates at Municipal Lighting Authorities are demonstrably and consistently lower than the rates of investor-owned utilities. According to a 2010 DOER report, in 2006 alone, rates offered by munis were lower by 30 percent.

While this legislation may not result in a large growth in the number of municipal light departments in the Commonwealth, allowing cities and towns to pursue this option will provide a significant measure of competition to IOUs, which now hold a monopoly in their respective towns and, many fear, often answer more to their shareholders than the residents they serve.

Given the superior performance and the consistently lower rates, it is fair to ask why no city or town has acquired an IOU's assets and formed a Municipal Lighting Authority since 1926. The reason is straightforward – under current law, IOU's can refuse to sell the existing infrastructure, most of which is located on public property, to a municipality regardless of the price offered. When an IOU

refuses to sell, the only option is for a municipality to build its own distribution network, doubling the number of poles and wires in a community. Since 1926, this has proven to be both infeasible and impractical.

While the MMA strongly supports the intent of H. 3896, we have significant concerns and ask you to adopt changes to clarify and improve the bill to better address the needs of municipalities.

First, we ask you to restore "net-book" value as the method of calculating the valuation of the existing electric infrastructure and jointly owned assets (such as utility poles). This was the valuation method in the original legislation. But H. 3896 sets the value at 50 percent of original cost less depreciation (OCLD or "net-book") plus 50 percent replacement cost less depreciation (RCLD). The use of the 50-50 valuation method is being advocated by the IOUs with the rationalization that it comes from a 1995 Supreme Judicial Court case involving an unsuccessful utility sale between the Towns of Hudson and Stow. But the court did not endorse or affirm this formula. The court merely affirmed that the current statute provides the Department of Public Utilities (DPU) with the authority to set a formula for calculating the value of the existing electric infrastructure. The court did not intend that valuation method in this specific case to become a generic formula. If this 50-50 valuation method is codified into statute, the IOUs will have effectively succeeded in defeating the purpose of the legislation, and the effort would fail. In the SJC case noted above, the 50-50 valuation method set by the DPU made it too costly for the Town of Stow to move forward. The Legislature should remedy the situation by setting a valuation method in statute that is feasible and fair – and that is the "net-book" method.

The use of "net book" value ensures that the municipality pays only the actual remaining value of the assets, and that the private utility is made whole for the original investment, based on the DPU's set depreciation schedule. We strongly urge you to adopt the valuation language from H. 869. As this is a complex issue, we would be happy to provide further information to assist in your analysis.

The MMA is also concerned with the "stranded costs" language in H. 3896. Municipalities should only be responsible for a fair share of an IOU's stranded costs and the least-cost method for infrastructure reconfiguration, engineering and other costs associated with a purchase and transfer of assets. We ask you to restore the language regarding stranded costs that was included in H. 869. As with the previous issue, without this change the legislation could be rendered infeasible and too costly for municipalities.

Finally, H. 3896 requires *existing* municipal light departments to comply with Green Communities Act (GCA). As you know, existing municipal utilities were exempt from the GCA for many good reasons, and the addition of this provision would be extraordinarily disruptive to the 40 municipal light departments that are operating effectively and efficiently for ratepayers and local taxpayers. We ask this language not be included in this bill and be addressed in a separate bill. The CGA requirements were included without a proper hearing. Clearly, the 40 municipal light departments and ratepayers should have an opportunity to comment and be heard before such a costly change in public policy is considered.

We respectfully request your support for this important legislation, with the essential changes noted above, and we thank you very much for your consideration.

Sincerely,

Geoffrey C. Beckwith
Executive Director