

# **Massachusetts Energy Efficiency Advisory Council**

## **By-Laws – Final**

The following are the by-laws for the organization and operation of the Energy Efficiency Advisory Council as authorized by The Green Communities Act of 2008.

### **ARTICLE 1. ESTABLISHMENT AND NAME**

The Energy Efficiency Advisory Council is established by Chapter 25 of the Massachusetts General Laws, Section 22. The body may also be informally known as the “EEAC” or simply as the “Council.”

### **ARTICLE 2. PURPOSE**

The purpose of these by-laws shall be to govern the organization and operation of the Energy Efficiency Advisory Council. As set forth in Chapter 25 of the General Laws, Section 22(b), “the Council shall seek to maximize net economic benefits through energy efficiency and load management resources and to achieve energy, capacity, climate and environmental goals through a sustained and integrated statewide energy efficiency effort.”

### **ARTICLE 3. POWERS AND DUTIES.**

#### **3.01 Statutory Duties**

(A) In accordance with Chapter 25, Section 22 of the General Laws, the Council shall review and approve demand resource program plans and budgets; work with program administrators in preparing energy resource assessments; determine the economic, system reliability, climate and air quality benefits of efficiency and load management resources; sponsor and recommend relevant research; recommend long term efficiency and load management goals to maximize economic savings and achieve environmental goals; and examine opportunities to offer or coordinate joint programs providing similar efficiency measures that save more than 1 fuel resource or to coordinate programs targeted at saving more than one fuel resource.

(B) Powers and duties specific to the three-year electric and natural gas efficiency plans shall be in accordance with Section 21(b)(1) and include, but are not limited to:

- (1) ensuring the plans provide for the acquisition of all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply;
- (2) periodically reviewing program cost effectiveness to ensure the programs are designed to obtain energy savings and system benefits with value greater than the costs of the program;
- (3) receiving the plans from the program administrators for review, approval, and/or comment every three years on or before April 30;

(4) requesting and receiving any additional information from the electric and natural gas distribution companies and municipal aggregators relevant to the consideration of the plan;  
(5) submitting approval or comments to the electric and natural gas distribution companies and municipal aggregators not later than 3 months after submission of the plan;  
(6) working with the electric and natural gas distribution companies and municipal aggregators to make changes or revisions to reflect the input of the Council.  
Further context and enumeration of these powers and duties are found in the Appendix of these by-laws in Chapter 25, Sections 19-22.

(C) As part of the three year and annual plan evaluation process, the Council shall develop a protocol for the review of independent energy saving project proposals from organizations unaffiliated with Program Administrators. In developing this protocol, the Council shall seek the guidance of technical consultants and shall work in conjunction with the Program Administrators

(D) The Council shall, as appropriate, review and approve a consultant work plan and budget to further Council goals and meet the mandates of the Green Communities Act. The Council shall annually submit a proposal to the Department regarding the level of funding necessary to retain its expert consults and cover reasonable administrative costs.

(E) The Chair of the Council shall explore the creation of an EEAC website to share pertinent information.

### **3.02 Reporting.**

As set out in Chapter 25 of the General Laws, Section 22(d), “the Council shall provide an annual report to the Department and the Joint Committee on Telecommunications, Utilities and Energy on the implementation of the plan which includes descriptions of the programs, expenditures, cost-effectiveness and savings and other benefits during the previous year.”

### **3.03 Home Sale Disclosures.**

In accordance with Chapter 13, Section 97A of the General Laws, the Council shall be consulted by the Board of Registration of Home Inspectors, on the development of requirements and adoption of regulations to require documents to be provided to a buyer of a single-family residential dwelling or a multiple-family residential dwelling with less than 5 dwelling units, or a condominium unit at the time of closing, outlining the procedures and benefits of a home energy audit, with no additional fees imposed or collected in connection with the provision of such documents.

## **ARTICLE 4. ADDITIONAL GENERAL POWERS.**

The EEAC additional general powers shall include the following except as added to or restricted by law:

### **4.01 Adopt and amend bylaws.**

The Council shall have the power to amend, repeal or adopt By-Laws or Articles of Procedure at any regular or special meeting of the Council by a two-thirds (2/3) vote of the members present at a Council meeting at which a quorum of voting members are present.

Amendments must be written and distributed to voting members of the Council at least one week in advance of the meeting at which the proposed amendment would be discussed.

#### **4.02 Committees.**

All substantive voting will be conducted during Council meetings. Committees or subcommittees may be formed to perform specific acts or functions at the Council's direction. The EEAC shall have authority to constitute committees as required including those related to consultant selection and operations, development and oversight of RFRs, press releases and drafting of such specialized documents as may be necessary. A Committee shall be constituted for the length of a specific project or as agreed upon by the Council but in no case for a period longer than two years without specific reauthorization by the Council.

#### **4.03 Elect and/or appoint officers and agents.**

As stated in Article 6.03, the Chair of the Council shall be in accordance with Chapter 25 of the General Laws, Section 22(a).

#### **4.04 Consultants.**

The Council shall engage and manage consultants and professional services as necessary and appropriate to fulfill its purposes in accordance with Chapter 25, Section 22(c). The Council shall approve consultant work plans, develop annual consultant budgets for submission and approval to the DPU, and review and comment upon reports completed by the consultants in the course of their work on behalf of the Council to further Council goals and meet the mandates of the Green Communities Act in accordance with Article 3.01.

### **ARTICLE 5 APPOINTMENT AND COMPOSITION OF THE COUNCIL.**

#### **5.01 Council Composition.**

As set forth in Chapter 25 of the General Laws, Section 22(a), the Council shall "consist of 11 members, including 1 person representing each of the following: (1) residential consumers, (2) the low-income weatherization and fuel assistance program network, (3) the environmental community, (4) businesses, including large C&I end-users, (5) the manufacturing industry, (6) energy efficiency experts, (7) organized labor, (8) the department of environmental protection, (9) the attorney general, (10) the executive office of housing and economic development, and (11) the department of energy resources."

**5.02 Term.**

As set forth in Chapter 25 of the General Laws, Section 22(a), “members shall serve for terms of 5 years and may be reappointed.”

**5.03 Chair.**

As set forth in Chapter 25 of the General Laws, Section 22(a), “the commissioner of energy resources shall serve as chair of the Council.”

**5.05 Ex-officio Members.**

As set forth in Chapter 25 of the General Laws, Section 22(a), “there shall be 1 non-voting, ex-officio member from each of the electric and natural gas distribution companies, 1 from each of the approved municipal aggregators, 1 from the heating oil industry and 1 from energy efficiency businesses. Ex Officio members shall have the ability to address any issue before the Council.

**5.06 Vacancies.**

A vacancy by expiration shall be filled in the manner of the original appointment. A vacancy that is created by resignation or a reason other than by expiration shall be filled in the same manner but only for the unexpired portion of the term. The Council may suggest the names of persons to the appointing authority to fill any vacancies. The appointing authority shall have the power to remove its appointee for just cause.

**5.07 Designees.**

In cases of emergency or significant personal hardship that prevent a voting Council member’s attendance at a particular meeting, a voting Council member may appoint a designee who shall have voting privileges consistent with those of council member. The member should submit the name of the designee in writing to the Chair prior to the meetings at which the designee is to function.

**ARTICLE 6 DUTIES OF OFFICERS**

**6.01 Chair.**

The Chair or a designee shall preside at all meetings of the Council.

**6.02 Course of Business.**

The chair shall propose a meeting agenda with Councilors ahead of each meeting. Councilors can request to add or remove agenda items. The Chair shall lead the Council through the meeting in a timely and orderly manner. Where votes are required, the Chair shall follow the voting requirements set forth in Articles 7 and 8. The Chairperson may authorize any other person to address the Council.

**6.03 Responsibility of the Chair.**

The Chair shall, in consultation with the members of the Council, do the following: make arrangements for all meetings of the Council; notify all members thereof; prepare an agenda for each meeting; keep accurate and complete records of attendance and proceedings of the Council, recording all votes; perform all duties incident to this office; keep written minutes of the Council meetings; transmit the actions and recommendation of the Council to the Governor, Department, General Court, or to others as appropriate.

## **ARTICLE 7 MEETINGS**

### **7.01 Schedule.**

Regular meetings shall be held in accordance with a schedule established by the Council and shall be routinely held on the second Tuesday of each month, and as otherwise deemed necessary by members of the Council, subject to the relevant provisions of the Open Meetings Law.

### **7.02 Special meetings.**

Special meetings may be called by the Chair or any six members of the Council held when necessary. Any Council member may ask the Chair for a special meeting. The Chair shall consult the Council to decide if the meeting shall be held and shall designate the time and place of such meetings.

### **7.03 Agenda.**

The Chair shall send copies of the agenda to each Council member via email in accordance with all state public records and open meeting requirements. Agendas shall also be sent electronically to any person or organization requesting them. Members may request that hard copies of agendas or other meeting materials be mailed to them.

**7.04 Quorum.** A simple majority of the total number of confirmed voting members shall constitute a quorum.

**7.05 Attendance.** Voting Council members or their designees who miss more than three consecutive meetings shall be asked to become more active on the Council. In the event of further absence the Council may decide by majority vote to recommend to the appointing authority that the appointment be reconsidered.

### **7.06 Open Meetings Requirements**

Meetings shall adhere to the requirement of the Open Meetings Law, including the requirements that notice of a meeting be filed with the Secretary of State and a copy of the notice be posted in the Executive Office for Administration and Finance at least 48 hours before the meeting.

## **ARTICLE 8 VOTING AND MEETING RECORDS**

### **8.01 Voting**

The EEAC is intended to operate primarily through a process of consensus agreement. Statutory requirements require a vote for approval of statewide energy efficiency plans that come before the Council. In those cases, and in the cases where consensus on other matters cannot be reached, the Council will operate by majority vote, where a quorum is required, and a majority of the voting members is sufficient to approve or reject a proposal. When a major vote is required, EEAC members must receive notice of a major vote such as evaluating plans, approving budget and other major decisions, at least two days before the date the vote is to be taken. Notice should be as specific as possible, identifying that issue(s) that is subject to the vote and all relevant background information. An exception to this rule may be made with EEAC approval if the party seeking the vote demonstrates why notice of the vote was not given at least two days in advance and why a vote at that time is required. Procedural votes may be undertaken at the discretion of the chair.

Other votes may be taken without such notice.

As set forth in M.G.L. c. 25 §22(b), in order for an efficiency plan and budget to be approved by the EEAC, two-thirds of members must vote in the affirmative. All other votes must be taken by a simple majority of Council members present. The Council will work to develop a process to appropriately address minority concerns should they arise.

Members, upon prior notification by e-mail or written correspondence with the meeting Chair, may assign a proxy vote to another voting member who will be physically present at the meeting to vote.

Any Council member may request a vote be taken on any issue related to Council business.

### **8.02 Meeting Minutes.**

The Chair shall compile minutes of each Council meeting that include the names of all members present no later than two weeks after the meeting and shall be in compliance with all applicable open meetings laws and public record laws.

## **ARTICLE 9 PROCEDURES FOR COUNCIL ACTION**

### **9.01 Procedures.**

As the presiding officer of the Council, the Chair shall provide the Council with regular status reports on matters related to the Council's purposes and shall provide the Council with timely information on matters that could result in legal action or that will require a vote of the Council.

## **ARTICLE 10 PROCUREMENT OF GOODS AND SERVICES AND DISBURSEMENT OF FUNDS**

### **10.01 Application.**

The Council shall adhere to all applicable general principles, policies and practices for purchasing all goods and services and in the disposal of state supplies.

### **10.02 Other Agreements.**

Nothing in these By-Laws shall prevent the Council from complying with the terms and conditions of any grant, gift, bequest, appropriation or co-operative agreement.

### **10.03 Procurement**

The Council shall use the Department of Energy Resources as a procurement agency. In the event another entity is used as a procurement agency, such activity shall be conducted in accordance with all applicable purchasing policies, procedures and regulations. All procurement decisions shall be made by consensus of Councilors, and where not possible, by a majority of voting Council members.

The Council shall develop a work plan and budget in accordance with Article 3.01 and Chapter 25, Section 22 of the General Laws.

The Council shall determine annual budgets required to support its work through the use of consultants. Each year's budget shall be submitted to the Department of Public Utilities no later than November 30<sup>th</sup> of the prior year, for approval by the DPU by December 31 of the prior year.

The budget shall generally describe the proposed consultant work for each year. Upon DPU approval, a full work plan will be developed by the Council for each year. The Council may amend the plan at any time during the year to facilitate addressing shifting or emergent priorities.

Consultants shall be hired according to Council agreement through competitive processes and careful review, to ensure that the highest level of services are obtained at reasonable value.

Consultants shall be managed on a daily basis by DOER, following the priorities enunciated by the Council. Such reports as are required of any consultants shall be developed with DOER supervision and Council review and comment.

### **Article 11 Severability**

If any provision or clause of these by-laws, or application thereof is held invalid, such invalidity shall not affect other provisions or applications of by-laws which can be given effect without the invalid provision or application, and to this end the provisions of the aforesaid sections are declared to be severable. These By-Laws must conform with all applicable laws in place as of the date on which they are adopted by the Council.

## **Appendix A COST-EFFECTIVE ENERGY EFFICIENCY AND DEMAND REDUCTION RESOURCES**

### **Chapter 25, Section 21**

Section 21 (a) To mitigate capacity and energy costs for all customers, the department shall ensure that, subject to subsection (c) of section 19, electric and natural gas resource needs shall first be met through all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply. The cost of supply shall be determined by the department with consideration of the average cost of generation to all customer classes over the previous 24 months.

(b)(1) Every 3 years, on or before April 30, the electric distribution companies and municipal aggregators with certified efficiency plans shall jointly prepare an electric efficiency investment plan and the natural gas distribution companies shall jointly prepare a natural gas efficiency investment plan. Each plan shall provide for the acquisition of all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply and shall be prepared in coordination with the energy efficiency advisory council established by section 22. Each plan shall provide for the acquisition, with the lowest reasonable customer contribution, of all of the cost effective energy efficiency and demand reduction resources that are available from municipalities and other governmental bodies.

(2) A plan shall include: (i) an assessment of the estimated lifetime cost, reliability and magnitude of all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply; (ii) the amount of demand resources, including efficiency, conservation, demand response and load management, that are proposed to be acquired under the plan and the basis for this determination; (iii) the estimated energy cost savings that the acquisition of such resources will provide to electricity and natural gas consumers, including, but not limited to, reductions in capacity and energy costs and increases in rate stability and affordability for low-income customers; (iv) a description of programs, which may include, but which shall not be limited to: (A) efficiency and load management programs; (B) demand response programs; (C) programs for research, development and commercialization of products or processes which are more energy-efficient than those generally available; (D) programs for development of markets for such products and processes, including recommendations for new appliance and product efficiency standards; (E) programs providing support for energy use assessment, real time monitoring systems, engineering studies and services related to new construction or major building renovation, including integration of such assessments, systems, studies and services with building energy codes programs and processes, or those regarding the development of high performance or sustainable buildings that exceed code; (F) programs for the design, manufacture, commercialization and purchase of energy-efficient appliances and heating, air conditioning and lighting devices; (G) programs for planning and evaluation; (H) programs providing commercial, industrial and institutional customers with greater flexibility and control over demand side investments funded by the programs at their facilities; and (I) programs for public education regarding energy efficiency and demand management; provided, however, that not more than 1 per cent of the fund shall be expended for items (C) and (D) collectively, without authorization from the advisory council; (v) a proposed

mechanism which provides performance incentives to the companies based on their success in meeting or exceeding the goals in the plan; (vi) the budget that is needed to support the programs; (vii) a fully reconciling funding mechanism which may include, but which shall not be limited to, the charge authorized by section 19; (viii) the estimated amount of reduction in peak load that will be reduced from each option and any estimated economic benefits for such projects, including job retention, job growth or economic development; and (ix) data showing the percentage of all monies collected that will be used for direct consumer benefit, such as incentives and technical assistance to carry the plan. With the approval of the council, the plan may also include a mechanism to prioritize projects that have substantial benefits in reducing peak load, reducing the energy consumption or costs of municipalities or other governmental bodies, or that have economic development, job creation or job retention benefits.

(3) A program included in the plan shall be screened through cost-effectiveness testing which compares the value of program benefits to the program costs to ensure that the program is designed to obtain energy savings and system benefits with value greater than the costs of the program. Program cost effectiveness shall be reviewed periodically by the department and by the energy efficiency advisory council. If a program fails the cost-effectiveness test as part of the review process, it shall either be modified to meet the test or shall be terminated.

(c) Each plan prepared under subsection (b) shall be submitted for approval and comment by the energy efficiency advisory council every 3 years on or before April 30. The electric and natural gas distribution companies and municipal aggregators shall provide any additional information requested by the council that is relevant to the consideration of the plan. The council shall review the plan and any additional information and shall submit its approval or comments to the electric and natural gas distribution companies and municipal aggregators not later than 3 months after submission of the plan. The electric and natural gas distribution companies and municipal aggregators may make any changes or revisions to reflect the input of the council.

(d)(1) The electric and natural gas distribution companies and municipal aggregators shall submit their respective plans, together with the council's approval or comments and a statement of any unresolved issues, to the department every 3 years on or before October 31. The department shall consider the plans and shall provide an opportunity for interested parties to be heard in a public hearing.

(2) Not later than 90 days after submission of a plan, the department shall issue a decision on the plan which ensures that the electric and natural gas distribution companies have identified and shall capture all energy efficiency and demand reduction resources that are cost effective or less expensive than supply and shall approve, modify and approve, or reject and require the resubmission of the plan accordingly. The department shall approve a fully reconciling funding mechanism for the approved plan and, in the case of municipal aggregators, a fully reconciling funding mechanism that requires coordination between the distribution company and municipal aggregator to ensure that program costs are collected, allocated and distributed in a cost effective, fair and equitable manner. The department shall determine the effectiveness of the plan on an annual basis.

(3) Each electric and natural gas plan shall be in effect for 3 years.

## **Appendix B COUNCIL COMPOSITION AND DUTIES**

### **Chapter 25, Section 22**

Section 22. (a) The department shall appoint and convene an energy efficiency advisory council which shall consist of 11 members, including 1 person representing each of the following: (1) residential consumers, (2) the low-income weatherization and fuel assistance program network, (3) the environmental community, (4) businesses, including large C&I end-users, (5) the manufacturing industry, (6) energy efficiency experts, (7) organized labor, (8) the department of environmental protection, (9) the attorney general, (10) the executive office of housing and economic development, and (11) the department of energy resources. Interested parties shall apply to the department for designation as members. Members shall serve for terms of 5 years and may be reappointed. The commissioner of energy resources shall serve as chair of the council. A member who is a representative of energy efficiency experts shall not have a contractual relationship with an electric or natural gas distribution company doing business in the commonwealth or any affiliate of such company, or any municipal aggregator. There shall be 1 non-voting, ex-officio member from each of the electric and natural gas distribution companies, 1 from each of the approved municipal aggregators, 1 from the heating oil industry and 1 from energy efficiency businesses.

(b) The council shall, as part of the approval process by the department, seek to maximize net economic benefits through energy efficiency and load management resources and to achieve energy, capacity, climate and environmental goals through a sustained and integrated statewide energy efficiency effort. The council shall review and approve demand resource program plans and budgets, work with program administrators in preparing energy resource assessments, determine the economic, system reliability, climate and air quality benefits of efficiency and load management resources, conduct and recommend relevant research, and recommend long term efficiency and load management goals to maximize economic savings and achieve environmental goals. Approval of efficiency and demand resource plans and budgets shall require a two-thirds majority vote. The council shall, as part of its review of plans, examine opportunities to offer joint programs providing similar efficiency measures that save more than 1 fuel resource or to coordinate programs targeted at saving more than one fuel resource. Any costs for joint programs shall be allocated equitably among the efficiency programs.

(c) The council may retain expert consultants; provided, however, that such consultants shall not have any contractual relationship with an electric or natural gas distribution company doing business in the commonwealth or any affiliate of such company.

The council shall annually submit to the department a proposal regarding the level of funding required for the retention of expert consultants and reasonable administrative costs. The proposal shall be approved by the department either as submitted or as modified by the department. The department shall allocate funds sufficient for these purposes from the natural gas and electric efficiency funding authorized under section 19; provided, however, that such allocation shall not exceed 1 per cent of such funding on an annual basis. The consultants used under this section shall be experts in energy efficiency and shall be independent.

(d) The electric and natural gas distribution companies and municipal aggregators shall provide quarterly reports to the council on the implementation of their respective plans.

The reports shall include a description of the program administrator's progress in implementing the plan, a summary of the savings secured to date and such other information as the council shall determine. The council shall provide an annual report to the department and the joint committee on telecommunications, utilities and energy on the implementation of the plan which includes descriptions of the programs, expenditures, cost-effectiveness and savings and other benefits during the previous year.

## **Appendix C ADDITIONAL RELEVANT LAW TO COUNCIL DUTIES**

### **Chapter 25, Section 19**

Section 19. (a) The department shall require a mandatory charge of 2.5 mills per kilowatt-hour for all consumers, except those served by a municipal lighting plant, to fund energy efficiency programs including, but not limited to, demand side management programs. The programs shall be administered by the electric distribution companies and by municipal aggregators with energy plans certified by the department under subsection (b) of section 134 of chapter 164. In addition to the aforementioned mandatory charge, such programs shall also be funded, without further appropriation, by: (1) amounts generated by the distribution companies and municipal aggregators under the Forward Capacity Market program administered by ISO-NE, as defined in section 1 of chapter 164; and (2) cap and trade pollution control programs, including, but not limited to, and subject to section 22 of chapter 21A, not less than 80 per cent of amounts generated by the carbon dioxide allowance trading mechanism established under the Regional Greenhouse Gas Initiative Memorandum of Understanding, as defined in subsection (a) of section 22 of chapter 21A, and the NO<sub>x</sub> Allowance Trading Program; and (3) other funding as approved by the department after consideration of: (i) the effect of any rate increases on residential and commercial consumers; (ii) the availability of other private or public funds, utility administered or otherwise, that may be available for energy efficiency or demand resources; and (iii) whether past programs have lowered the cost of electricity to residential and commercial consumers. In authorizing such programs, the department shall ensure that they are delivered in a cost-effective manner capturing all available efficiency opportunities, minimizing administrative costs to the fullest extent practicable and utilizing competitive procurement processes to the fullest extent practicable.

(b) The department may approve and fund gas energy efficiency programs proposed by gas distribution companies including, but not limited to, demand side management programs. Energy efficiency activities eligible for funding under this section shall include combined heat and power and geothermal heating and cooling projects. Funding may be supplemented by funds authorized by section 21. The programs shall be administered by the gas distribution companies. In authorizing such programs, the department shall ensure that they are delivered in a cost-effective manner capturing all available efficiency opportunities, minimizing administrative costs to the fullest extent practicable and utilizing competitive procurement processes to the fullest extent practicable.

(c) Electric and gas energy efficiency program funds shall be allocated to customer classes, including the low-income residential subclass, in proportion to their contributions to those funds; provided, however, that at least 10 per cent of the amount expended for electric energy efficiency programs and at least 20 per cent of the amount expended for gas energy efficiency programs shall be spent on comprehensive low-income residential demand side

management and education programs. The low-income residential demand side management and education programs shall be implemented through the low-income weatherization and fuel assistance program network and shall be coordinated with all electric and gas distribution companies in the commonwealth with the objective of standardizing implementation. Such programs shall be screened only through cost-effectiveness testing which compares the value of program benefits to program costs to ensure that a program is designed to obtain energy savings and system benefits with value greater than the costs of the program.