

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

James H. Fagan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act providing additional authority for issuance of revenue bonds by the cities and towns having a municipal gas or electric department.

PETITION OF:

NAME:

James H. Fagan

DISTRICT/ADDRESS:

3rd Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3302 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT PROVIDING ADDITIONAL AUTHORITY FOR ISSUANCE OF REVENUE BONDS BY THE CITIES AND TOWNS HAVING A MUNICIPAL GAS OR ELECTRIC DEPARTMENT.

*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. This act may be cited as the Revenue Bond Law of 2010.

2 SECTION 2. Definitions.
3 The following words as used in this act shall, unless the context otherwise requires, have the following meanings:—
4 “Municipal light board” or “board”, the municipal light board or commission, municipal gas and electric
5 commission or similar body; the mayor or city manager, as the case may be, of a city having no such body; or the
6 selectmen of a town having no such body.
7 “Municipality”, a city or town having a municipal gas or electric department established under chapter one hundred
8 and sixty-four of the General Laws or a special act. Except where otherwise specifically provided, a municipality
9 shall exercise any of its power or authority contained in this act through its municipal light board.

10 “Undertaking”, any undertaking with respect to the electric, gas or telecommunications plant or system of a
11 municipality in which such plant is authorized to distribute its product, including without limiting the generality of
12 the foregoing, planning, financing, acquiring, constructing, improving, purchasing, operating, maintaining, using,
13 altering, sharing costs of, owning, leasing, selling, disposing of or otherwise participating in any system or facilities
14 or portion thereof, for the generation, production, transmission, transformation, distribution or sale of electric power
15 and energy, gas or telecommunications or the product or service therefrom.

16 SECTION 3. Revenue bonds authorized.
17 (a) Any municipality, acting by its municipal light board, may borrow money by the issue of its revenue bonds to
18 pay all or part of the costs of any undertaking. Without limiting the generality of the foregoing, such costs may
19 include finance charges, interest prior to and during the carrying out of any undertaking and for a reasonable period
20 thereafter, the funding of temporary notes issued as hereinafter provided, such reserves for debt services or other
21 capital or current expenses as may be required by a trust agreement or resolution securing notes or bonds, and all
22 other expenses incidental to the determination of the feasibility of any undertaking or to carrying out the undertaking
23 or to placing it in operation. ,

24 (b) The bonds of each issue shall mature at a time or times not exceeding forty years from their dates of issue and
25 may be made redeemable before maturity with or without premiums. Subject to the provisions of this act and to the
26 terms of the authorizing vote, the board shall determine the date or dates of the bonds, their denomination or
27 denominations, the place or places of payment of the principal and interest, which may be at any bank or trust
28 company within or without the commonwealth, their interest rate or rates, maturity or maturities, redemption
29 privileges, if any, and the form and other details of the bonds. The bonds shall be signed by the city or town
30 treasurer, shall be countersigned by the mayor or city manager, as the case may be, of a city or by a majority of the
31 selectmen of a town either manually or by facsimile and shall bear the seal of the city or town or a facsimile thereof.
32 Any coupons attached thereto shall bear the facsimile signature of the city or town treasurer.

33 (c) In case any officer whose signature or a facsimile of whose signature shall appear on any bonds, coupons or
34 notes issued under this chapter shall cease to be such officer before the delivery thereof, such signature or such
35 facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until
36 after such delivery.

37 (d) The bonds may be issued in coupon or in registered form, or both, and provision may be made for the
38 registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion
39 into coupon bonds or bonds registered as to both principal and interest and for the interchange of registered and
40 coupon bonds. Subject to the provisions of this act and to the terms of the authorizing vote, the board may sell the
41 bonds in such manner, either at public or private sale, and for such price, as it may determine will best effect the
42 purposes of this act. The municipality may also provide for authentication of bonds by a trustee, or fiscal agent.

43 (e) Prior to the preparation of definitive bonds, the municipality may issue interim receipts or temporary bonds, with
44 or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available
45 for delivery. The municipality may also provide for the replacement of any bonds which shall have become
46 mutilated or shall have been destroyed or lost.

47 SECTION 4. Temporary Notes.
48 In anticipation of the issue of bonds under this Act, a municipality, acting by its municipal light board, may issue
49 temporary notes. Subject to the terms of the authorizing vote, the board may provide for the sales of the notes at
50 public or private sale and may determine the date or dates of the notes, their denomination or denominations, the
51 place or places of payment of the principal and interest, which may be at any bank or trust company within or
52 without the commonwealth, their interest rate or rates, maturity or maturities, redemption privileges, if any, and the
53 form and other details of the notes. Temporary notes issued herein shall be executed in the manner provided herein
54 for bonds and shall be payable within five years from their respective dates, but the principal of and interest on notes
55 issued for a shorter period may be renewed or paid from time to time by the issue of other notes under this act,
56 provided the period from the date of issue of an original note to the maturity of any note issued to renew or pay the
57 same debt or the interest thereon shall not exceed five years.

58 Unless otherwise provided in the authorizing vote, the board may cause notes to be refunded to the extent provided
59 in this chapter.
60 To the extent of any borrowing in anticipation of bonds, the maximum maturity of an equivalent amount of the
61 bonds shall be measured from the date of the anticipatory borrowing.

62 SECTION 5. Resolution or trust agreement securing bonds or notes.
63 (a) In the discretion of the board, but subject to the terms of the authorizing vote, any bonds or notes issued
64 hereunder may be secured by a resolution of the board or by a trust agreement between the municipality and a
65 corporate trustee, which may be any trust company or bank having the powers of a trust company within or without
66 the commonwealth and such trust agreement shall be in such form and executed in such manner as may be
67 determined by the board. Such trust agreement or resolution may pledge or assign, in whole or in part, the revenues
68 and other moneys derived or to be derived by the municipality from its electric or gas system and any contract or
69 other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or
70 thereafter acquired by the city or town, and the proceeds thereof, but shall not convey or mortgage the electric or gas
71 plant or any part thereof. Such trust agreement or resolution may contain, with respect to the electric or gas plant and
72 its finances, such provisions for protecting and enforcing the rights, security and remedies of the bondholders or
73 noteholders as may be reasonable and proper and not in violation of law, including without limiting the generality of

74 the foregoing provisions defining defaults and providing for remedies in the event thereof which may include (i) the
75 acceleration of maturities and covenants setting forth duties of, and limitations on, the municipality in relation to
76 the acquisition, construction, improvement, enlargement, alteration, equipping, furnishing, maintenance, use,
77 operation, repair, insurance and disposition of property, the custody, safeguarding, investment and application of
78 moneys, the issue of additional bonds or notes, the fixing, revision and collection of fees and charges, the
79 obligations of the city or town to pay for electricity used by it, the use of any surplus bond or note proceeds, the
80 establishment of reserves, and the making and amending of contracts and (ii) provision for the trustee under such a
81 trust agreement to take possession and control of the electric or gas system of the municipality, to operate and
82 maintain the same, to make any necessary repairs, renewals and replacements in respect thereof, and to fix, revise
83 and collect fees and charges. Such trust agreement or resolution may provide for the payment of debt service on
84 bonds and notes issued by the municipality for electric or gas purposes other than under this act from the revenues or
85 other moneys so pledged, either on a parity with any or all bonds and notes issued hereunder or otherwise. Subject to
86 the provisions of this act, moneys subject to the trust agreement or resolution shall be held, invested and applied as
87 provided herein, provided that moneys not deposited in trust with a corporate trustee shall be in the custody of the
88 municipal treasurer. Moneys to be applied pursuant to the trust agreement or resolution shall be deemed
89 appropriated for the purposes to which they are to be so applied.

90 (b) For so long as any bonds issued by a municipality under this act are outstanding and unpaid, the fees and charges
91 for electricity or gas and other services, facilities and commodities furnished or supplied by the municipality through
92 its electric or gas system shall be so fixed as to provide revenues at least sufficient to pay all costs and expenses in
93 connection with the operation and maintenance of the electric or gas system and all necessary repairs, replacements
94 and renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds issued by the
95 municipality for electric or gas purposes, to create and maintain reserves as may be required by any resolution or
96 trust agreement securing bonds, and to pay any and all amounts which the municipality may be obligated to pay
97 from said revenues by law or contract.

98 (c) It shall be lawful for any bank or trust company to act as a depository or trustee of the proceeds of bonds or notes
99 or of revenues or other moneys under any such trust agreement or resolution and to furnish such indemnifying bonds
100 or to pledge such securities as may be required by the trust agreement or resolution. Any such trust agreement or
101 resolution may set forth the rights and remedies of the bondholders or noteholders and of the trustee, and may
102 restrict the individual right of action by bondholders or noteholders. In addition to the foregoing, any such trust
103 agreement or resolution may contain such other provisions as the board may deem reasonable and proper for the
104 security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or
105 resolution may be treated as current operating expenses. Furthermore, so much of those amounts accumulated for
106 depreciation as established pursuant to section fifty-seven of chapter one hundred and sixty-four may from time to
107 time be used to pay any bonds and notes issued under this Act when authorized by the municipality, acting through
108 its municipal light board. Debt service on bonds and notes issued hereunder and sums required to be reserved from
109 revenues pursuant to such trust agreement or resolution shall, to the extent not otherwise provided, be included in
110 the requirements of the sinking fund or serial debt of the plan for the purposes of sections fifty-seven and fifty-eight
111 of chapter one hundred sixty-four of the General Laws. The pledge by any such trust agreement or resolution shall
112 be valid and binding and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code
113 from the time when the pledge is made; the revenues, moneys, rights and proceeds so pledged and then held or
114 thereafter acquired or received by the municipality shall immediately be subject to the lien of such pledge without
115 any physical delivery or of segregation thereof or further act; and the lien of any such pledge shall be valid and
116 binding as against all parties having claims of any kind in tort, contract or otherwise against the municipality,
117 irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a
118 pledge is created need be filed or recorded except in the records of the board, and no filing need be made under the
119 Uniform Commercial Code.

120 SECTION 6. Deposit or investment of bond or note proceeds.
121 Subject to the trust agreement or resolution, the proceeds of bonds or notes issued under this act and any other
122 moneys governed by the trust agreement or resolution may be deposited or invested in demand deposits, time
123 deposits or saving deposits in banks which are members of the Federal Deposit Insurance Corporation or in
124 obligations issued or guaranteed by the United States of America or by any agency or instrumentality thereof or as
125 may be provided by any other applicable law.

126 SECTION 7. Bonds and notes as limited obligations.
127 The bonds and notes issued under this act shall be payable solely from the funds provided therefor under this act, the
128 liability of the municipality from other funds being limited to obligations undertaken by it to pay for the electricity
129 used by it, and a statement to this effect shall be included on the face of such bonds and notes. The bonds and notes
130 and such obligations shall not at any time be included in the debt of the municipality for the purpose of ascertaining
131 its borrowing capacity.

132 SECTION 8. Trust funds.

133 All moneys received pursuant to the provisions of this act, shall be deemed to be trust funds to be held and applied
134 solely as provided in this act.

135 SECTION 9. Enforcement of bondholders' rights.
136 Any holder of bonds or notes issued under the provisions of this act or of any of the coupons appertaining thereto,
137 and the trustee under a trust agreement or resolution securing the same except to the extent the rights herein given
138 may be restricted by such trust agreement or resolution, may bring suit upon the bonds, notes or coupons and may,
139 either at law or in equity, by suit, action, mandamus, or other proceedings (which may include the appointment of a
140 receiver to take possession and control of the electric or gas system of the municipality, to operate and maintain the
141 same, to make any necessary repairs, renewals and replacements in respect thereof, and to fix, revise and collect fees
142 and charges), protect and enforce any and all rights under the laws of the commonwealth or granted hereunder or
143 under such trust agreement or resolution, and may enforce and compel the performance of all duties required by this
144 act or by such trust agreement or resolution to be performed by the municipality or by any officer thereof.

145 SECTION 10. Bonds and notes issued as legal investments.
146 Bonds and notes issued under the provisions of this act are hereby made securities in which all public officers and
147 public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their
148 commercial depart-ments, savings banks, cooperative banks, banking associations, investment companies,
149 executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in
150 their control or belonging to them. Such bonds and notes are hereby made securities which may properly and legally
151 be deposited with and received by any state or municipal officer or any agency or political subdivision of the
152 commonwealth for any purpose for which the deposit of bonds or obligations of the commonwealth is now or may
153 hereafter be authorized by law.

154 SECTION 11. Bonds and notes deemed investment securities.
155 Notwithstanding any of the provisions of this act, or any recitals in any bonds or notes issued under this act, all such
156 bonds and notes shall be deemed to be investment securities under the Uniform Commercial Code.

157 SECTION 12. Tax exemption.
158 The bonds and notes issued under this act, their transfer and the income therefrom, including any profit made on the
159 sale thereof, shall at all times be free from taxation within the commonwealth.

160 SECTION 13. Refunding bonds.
161 Any municipality having bonds, outstanding under this act, acting by its municipal light board, may issue refunding
162 bonds for the purpose of paying bonds issued at maturity or upon acceleration or redemption. The refunding bonds
163 may be issued at such time prior to the maturity or redemption of the refunded bonds as the board deems to be in the
164 public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds
165 being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of
166 payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being
167 refunded, and such reserves for debt service or other capital or current expenses from the proceeds of such refunding
168 bonds as may be required by a trust agreement or resolution securing bonds. The issue of refunding bonds, the
169 maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and
170 obligations of the municipality respect of the same shall be governed by the provisions of this act relating to the
171 issue of bonds other than refunding bonds insofar as the same may be applicable.

172 SECTION 14. No other consent or proceedings.
173 Bonds and notes may be issued under this act without the consent of any department, division, commission or
174 agency of the commonwealth or of any political subdivision thereof and without any other proceedings or the
175 happening of any other conditions or things than those proceedings, conditions or things which are specifically
176 required therefor by this act, and the validity of and security for any bonds or notes issued by the municipality shall
177 not be affected by the existence or non-existence of any such consent or other proceedings, conditions or things. The
178 provisions of this act authorizing the issue of bonds and notes shall not be deemed to preclude the issue of bonds and
179 notes under any other authority.

180 SECTION 15. Construction of act.
181 The provisions of this act shall be deemed to provide an additional, alternative and complete method for the doings
182 of the things authorized hereby and shall be deemed and construed to be supplemental and additional to, and not in
183 derogation of, powers conferred upon a municipality by law.

184 SECTION 16. Severability.
185 The provisions of this act are severable, and if any provision hereof shall be held invalid in any circumstances, such
186 invalidity shall not affect any other provisions or circumstances. This act shall be construed in all respects so as to
187 meet all constitutional requirements. In carrying out the purposes and provisions of this act, all steps shall be taken
188 which are necessary to meet constitutional requirements whether or not such steps are required by statute.

189 SECTION 17. A municipality may accept the provisions of this act when authorized by a majority vote as defined in
190 section one of chapter forty-four of the General Laws.