



INTEREST

New Government Reorganization Legislation Filed by Governor Patrick

Key Changes Affecting Massachusetts Utility Regulation

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Massachusetts Governor Deval Patrick has filed legislation pursuant to Article 87 of the Massachusetts Constitution, which facilitates government reorganization.

The bill is entitled "An Act Reorganizing the Governor's Cabinet and Certain Executive Agencies of the Executive Department" and it substantially overhauls the current structure of utility regulation in the Commonwealth of Massachusetts.

The proposal has been referred to the Joint Committee on State Administration and Regulatory Oversight, which is led by Rep. Antonio Cabral (D-New Bedford) and Sen. Dianne Wilkerson (D-Boston). An initial hearing was held on the bill on February 15, 2007.

Under Article 87, the proposal must be voted up or down

without amendment by lawmakers within 60 days.

The proposed legislation bifurcates the current agency, the Department of Telecommunications and Energy, into two distinct components: one dealing with energy issues and one dealing with telecommunications and cable matters.

The new energy agency will be known by its "old" name, the Department of Public Utilities, and will be managed by the newly established Commonwealth Utilities Commission. This Commission will be comprised of three commissioners who will report to the Secretary of Energy and Environment.

Telecommunications and cable television issues will be spun off to a new agency with a single commissioner.

COMMONWEALTH UTILITIES COMMISSION

The composition of this new agency is as follows:

- The Department of Public Utilities will report to the Commonwealth Utilities Commission, which shall be comprised of three members. No more than two Commissioners may be from the same political party.
- All Commissioners will be required to have a professional background in electric or natural gas industries.
- Two of the three Commissioners will be appointed to terms that are coterminous with the Governor (i.e. four years).
- The third Commissioner will be appointed to a term that starts and ends two years after each Governor's term.
- Commissioners will be appointed and may be removed by the Secretary of Energy and Environmental Affairs, with the approval of the Governor.
- The Secretary will designate one Commissioner as Chairman, who will serve in that position for a term of two years. He or she may be reappointed unless removed

as Chairman by the Secretary, with the approval of the Governor.

- Any decision made or order issued by the Commission shall be made by majority of a quorum of two members.

ENERGY FACILITIES SITING BOARD

The reorganization plan also contains important changes to the make-up of the Energy Facilities Siting Board. The Board shall now be composed of the following members:

- Secretary of Energy and Environmental Affairs, who shall serve as Chairman of the Board
- Secretary of Housing and Economic Development
- Commissioner of the Division of Energy Resources
- Commissioner of the Department of Environmental Protection
- Two Commissioners of the Commonwealth Utilities Commission
- Three public members, who will be appointed by the Governor for a term coterminous with that of the Governor. Each shall be experienced in environmental, labor and energy issues, respectively.

The primary goal of the bill is to establish and outline the conceptual restructuring of the utilities agency, and it is anticipated that there will be future legislation to implement this restructuring.

With this new structure for energy issues, there are several questions that arise:

- Commissioners will now be appointed by the Secretary, with the approval of the Governor, rather than directly appointed by the Governor. What is the significance to this new appointment process?
- Issues relating to the standard for removal from office - is it similar to the current standard for removal?
- How seamless will the transition be for current dockets and pending motions at the Department?
- What changes will occur with respect to the relationship with Federal regulators, such as the Federal Energy Regulatory Commission, and the manner in which any delegated obligations from the federal government are implemented?
- A major change with the Siting Board is the designation of the Secretary of Energy and Environment as Chairman, rather than the Chairman of the Commission. How will this

structural change affect the administration of cases before the Siting Board?

- How will new appointees view energy issues within the traditional intersection of the adjudicatory and legislative role of the Department as compared to its policy roles?
- Division of Energy Resources now falls within the Energy and Environment Secretariat and remains as a separate entity. As such, will it be the leading policy arm for the Secretariat?

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

This new agency will be organized with the following provisions:

- One Commissioner will oversee telecommunications and cable issues.
- Pole attachment regulation is likely to remain primarily with the Department of Public Utilities, but it will be coordinated pursuant to joint regulation or Memorandum of Understanding.

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Based on our extensive regulatory expertise and experience, **Brown Rudnick's Energy & Utilities Group** is uniquely positioned to assist clients in assessing and reacting to these proposed changes.

Our practice is built on an interdisciplinary model, combining lawyers from each of Brown Rudnick's offices with expertise in energy, utility and regulatory matters, government relations, bankruptcy and restructuring, environmental law, mergers and acquisitions, project finance, siting, permitting, land use and real estate to specialize in energy- and utility-related issues.

The Energy & Utilities Group has historically represented developers, purchasers and sellers of energy projects, as well as their lenders. These include wind turbine generation facilities, natural gas, oil and coal facilities, hydroelectric plants, waste-to-energy facilities, cogeneration facilities, alternative fuel projects, distributed generation facilities, natural gas pipelines and LNG facilities.

Additionally, our Government Law & Strategies Group works particularly close with our energy team in recognition of the substantial political issues associated with many current energy matters. With Capitol Hill advocates located in our Washington, DC office, we are able to extend our reach and resources even further. This collective pool of experience and perspective positions us to effectively service the energy industry's fast-changing market.

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