ATTACHMENT F

July 16, 2021

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 12 of House Bill No. 4002, “An Act making appropriations for the fiscal year 2022 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements.”

I am grateful that the Legislature took action on this proposal, which was included in the budget that I proposed in January of this year. The Legislature made a number of edits to the proposed language. I am agreeable to all of the edits, except for one which could seriously undermine the effectiveness of the provision.

Under the Renewable Energy Portfolio Standard (RPS) and Alternative Energy Portfolio Standard (APS), the companies who provide Massachusetts ratepayers with electricity must obtain a minimum percentage of that electricity from clean sources. When a company fails to meet these requirements, the company must make so-called “alternative compliance payments” to the Commonwealth.

In recent years, a growing number of companies have failed to supply the required clean energy and have ceased to do business in the Commonwealth without making the required alternative compliance payments. The result is that the ratepayers of the Commonwealth bear the burden of the loss of clean energy benefits and are unable to use alternative compliance payments to offset those burdens. Between 2017 and 2019 companies failed to make a total of $188 million in alternative compliance payments.

Section 12 grants the Department of Energy Resources (DOER) the explicit authority to create a lien, sue in court to collect on any outstanding debt, as well as to enforce any such lien against companies which fail to make their alternative compliance payments. This legislation would essentially put alternative compliance payments on the same footing as taxes owed to the Commonwealth and give those debts priority treatment if a company declares bankruptcy.

Because the companies at issue typically do not have a physical presence in the Commonwealth, DOER expects that the bulk of their in-state assets will be accounts receivable and other intangible property. These accounts frequently turn over, which means that for this legislation to have a real practical impact, it is vital for DOER’s lien to cover accounts receivable and other property that a company acquires after the lien goes into effect. However, as part of its amendments to my original proposal, the Legislature eliminated a reference to this sort of property. I am proposing to reinsert that reference. This language will best position DOER to achieve the intent of this proposal: holding companies accountable when they fail to provide Massachusetts ratepayers with the clean energy we demand and then default on their monetary obligations to the Commonwealth.

For this reason I recommend that Section 12 be amended by inserting after the word “supplier” in line 222 the following words:- , including property acquired after the lien arises.

Respectfully submitted,

Charles D. Baker

Governor