HOUSE DOCKET, NO. FILED ON: 1/13/2009

**HOUSE . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**John H. Rogers**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*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 Facilitating the Formation of Statewide Mutual Aid Agreements for Public Work Agencies .

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PETITION OF:

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| --- | --- |
| Name: | District/Address: |
| John H. Rogers | 12th Norfolk |

The Commonwealth of Massachusetts

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**In the Year Two Thousand and Nine**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

An Act Facilitating the Formation of Statewide Mutual Aid Agreements for Public Work Agencies .

 *Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

**Chapter 40 of the General Laws is hereby amended by inserting the**

**following new section:**

**Chapter 40, Section 4J. The Statewide Municipal Mutual**

**Assistance Program.**

**(a)(i) “The statewide municipal mutual assistance agreement for**

**public works” is defined as a comprehensive statewide agreement**

**entered into by participating governmental units for the facilitation**

**and provision of sharing of public works resources across**

**jurisdictional lines in the case of public works incidents that require**

**assistance from one or more additional municipalities.**

**. (ii) “Governmental unit” is defined as a city, town, county, district**

**as defined in Section 1A. however constituted, water or sewer**

**commission established under the provisions of chapter 40N or**

**pursuant to a special law, fire district, or other political entity of the**

**Commonwealth or its municipalities.**

 **(b) There shall be a statewide mutual assistance agreement**

**developed for Public Works activities, by the Statewide Municipal**

**Mutual Assistance Advisory Committee that covers Public Works**

**services, personnel, equipment, supplies and facilities to prepare**

**for, prevent, mitigate, respond to and recover from incidents that**

**require assistance from additional municipalities, consistent with**

 **the provisions herein. Nothing in this section shall establish or**

**apply to mutual aid agreements among local public safety agencies.**

**All 351 municipalities of the commonwealth shall be required to opt**

 **into the statewide municipal mutual assistance agreement, within**

**one year of the enactment of the legislation.**

**The chief executive officer of a city or town, or as otherwise**

**specified by statute or charter must sign the mutual assistance**

**agreement. If a community does not execute the agreement, it is**

**assumed that the community will not be a participant. Participation**

**shall exist for a period of ten years. Other governmental units not**

**under the direction and control of a commonwealth municipality**

**shall be authorized to sign on to the statewide mutual aid agreement**

**on a form filed with and prescribed by the Statewide Municipal**

**Mutual Assistance Advisory Committee. In addition, governmental**

**units from a municipality directly adjacent to a commonwealth**

**municipality, but in another state, shall be able to sign on to the**

**statewide mutual aid agreement if duly authorized on a form**

**prescribed by the Statewide Municipal Mutual Assistance**

**Advisory Committee.**

 **(c) There will be an annual open enrollment period for those**

**communities who are not part of the Statewide Municipal Mutual**

**Assistance Program. The date of the open enrollment period and**

**any other requirements will be established by the Statewide**

**Municipal Mutual Assistance Advisory Committee. In addition, a**

**community may opt out of the program at any time by informing**

**the Statewide Mutual Assistance Advisory Committee, in writing,**

**of its intent to terminate participation in the program. This request**

**for removal from the program shall be executed by the chief**

**executive officer of a city or town, or as otherwise specified by**

**statute or charter.**

 **(d) There shall be a Statewide Municipal Mutual Assistance**

**Advisory Committee that shall consist of one appointee made by**

**the following parties¨ the Massachusetts Highway Association, the**

**New England Chapter of the American Public Works Association**

**(Massachusetts Representative), the New England Water**

**Environment Association (Massachusetts Representative),**

**Massachusetts Tree Wardens Association and the Mass Water Works**

**Association. One appointee from the Executive Office of Public**

**Safety and one member from each of the state’s Regional Planning**

**Agencies shall serve as Ex-officio members.**

 **(e) The Statewide Municipal Mutual Assistance Advisory**

**Committee shall develop procedural plans, protocols and programs**

**for intrastate cooperation to be used by public works agencies in**

**response to an incident.**

 **(f) Each participating governmental unit shall identify no less than**

**one, but no more than three points of contact within its public works**

**agency, and shall provide for contacts consistent with the**

**governmental units so-called continuation of operation/continuation**

**of governance plan.**

 **(g) A participating governmental unit may request the assistance**

**of one or more participating governmental units to:**

 **(1) Manage public works incident response or recovery if they do**

**not possess the ability to do so effectively, independently or;**

 **(2) Conduct public works incident response or recovery related**

**exercises, testing or training.**

 **(h) A request for assistance to a participating governmental**

**unit shall be made by and to: the chief executive officer of a city or**

**town, or as otherwise specified by statute or charter, or one of three**

**designated points of contact. An oral request shall be allowable but**

**must be followed in writing no later than twenty-four hours after the**

**oral request is made.**

 **The request must include the following information:**

 **(1) A description of the public works incident response and**

**recovery functions for which assistance is needed.**

 **(2) The amount and type of public works services, equipment,**

**supplies, materials, personnel and other resources requested and a**

**point of contact at the location.**

 **(3) The place and time where assistance is needed and where the**

**point of contact will be.**

 **(i) The responding governmental unit shall not be required to**

**respond to a request and may choose to do so only if responding**

**would not jeopardize the participating municipality’s own**

**reasonable protection.**

 **(j) The dispatch of public works resources under the statewide**

**mutual assistance agreement shall operate under the direction of**

**their parent agency. Tactical operational control of resources shall**

**be under the direction and control of the requesting jurisdiction.**

**The administration and coordination of the statewide mutual aid**

**agreement shall be the responsibility of the Statewide Municipal**

**Mutual Assistance Advisory Committee.**

 **(k) Reimbursement for any and all public works services**

**performed under the statewide municipal mutual assistance**

**agreement is presumed, but may be waived in writing by a**

**participating municipality prior or subsequent to responding to an**

**incident through a supplemental agreement. This section shall not**

**provide for reimbursement of any kind outside of what is agreed to**

**by the individual governmental units.**

 **(l) Notwithstanding section 4A of chapter 40 of the general laws,**

**the chief executive officer of a city or town, or as otherwise specified**

**by statute or charter, is hereby authorized to enter into supplemental**

**agreements on behalf of such unit with other governmental units to**

**further define the rights and responsibilities of each party for the**

**provision of mutual aid pursuant to the statewide municipal mutual**

**assistance agreement established herein.**

 **(m) While in transit to, returning from, and during a mutual**

**assistance response for another governmental unit, a participating**

**public works employee of a governmental unit, or volunteer acting**

**officially under the authorization of the governmental unit, that is a**

**party to the statewide municipal mutual assistance agreement**

**shall maintain the right of indemnification granted by law, or by his**

**home governmental unit, should it exist, for all claims arising out of**

**any action within the scope of employment in accordance with the**

**statewide municipal mutual assistance agreement pursuant to this**

**section.**

 **(n) All public works employees and equipment requested and**

**deployed pursuant to the statewide municipal mutual assistance**

**agreement shall be covered for liability, immunity, employee**

**benefits, worker’s compensation and insurance, by their employer,**

**as if they were in their own jurisdiction. Participating governmental**

**units may, by supplemental agreement with one or more**

**participating governmental units, address issues such as, but not**

**limited to, pay and benefit for government unit employees and**

**volunteers, insurance, indemnification, injury compensation and**

**other operational matters related to services provided under a**

**mutual aid response.**

 **(o) Barring a supplemental agreement to the contrary, public**

**works employees shall receive the same compensation as if they**

**were operating in their own jurisdiction while performing services**

**under the statewide municipal mutual assistance agreement.**

 **(p) All activities performed under the statewide municipal mutual**

**assistance agreement by governmental units are hereby declared to**

**be governmental function. Neither the parties, nor, except in cases**

**of willful misconduct, gross negligence, or bad faith, their personnel**

**complying with or reasonable attempting to comply with the mutual**

**aid agreement or any ordinance, rule or regulation enacted or**

**promulgated pursuant to the provisions of this section shall not be**

**held liable for the death or injury to persons or for damage to**

**property as a result of any such activity.**

 **(q) Public works employees of a governmental unit that is a party**

**to the statewide municipal mutual assistance agreement shall be**

**granted recognition of their respective jurisdiction, authority,**

**licenses or permits outside their original jurisdiction while**

**operating under the statewide municipal mutual assistance**

**agreement.**

 **(r) This section shall not affect inter-local agreements established**

**pursuant to section 4A of chapter 40 of the general laws.**

 **(s) The Statewide Municipal Mutual Assistance Committee shall**

**develop and make available to participating governmental units,**

**forms to facilitate requests for aid, and to facilitate record keeping**

**of movement of public works equipment and personnel.**