SENATE DOCKET, NO. FILED ON: 1/8/2009

**SENATE . . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Baddour, Steven (SEN)**

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

*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 relative to the operation and management of rights of way.

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

PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |
| Baddour, Steven (SEN) | First Essex |

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S00792 OF 2007-2008.]

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

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An Act relative to the operation and management of rights of way.

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

SECTION 1. Section 5(j) of chapter 21 E of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out section 5(j) in its entirety and inserting the following new section 5(j):

Section 5(j): “ An agency or authority of the commonwealth and a public utility company that owns, holds title to, possesses an easement in, or maintains any property interest in, a right of way that is a site at which the department has incurred costs for response actions shall not be liable to the commonwealth for those costs if the agency, authority, or public utility company, respectively, can establish by a preponderance of the evidence that: “

(1)   it is not the owner or operator of any building, structure, installation, equipment, pipe or pipeline, including any pipe into a sewer or publicly-owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft from which the release or threat of release has occurred;

(2)   it is not a person or the successor to a person described in clauses (2), (3), (4) or (5) of paragraph (a);

(3)   “no act of the agency, authority, or public utility company, or of the agency’s, authority’s or public utility company’s employee or agent, caused or otherwise contributed to the release or threat of release or caused the release or threat of release to become worse that it otherwise would have been;

(4)   it notified the department immediately upon obtaining knowledge of a release or threat of release for which notification is required pursuant to, and in compliance with, section seven or regulations promulgated pursuant thereto;

(5)   it provided reasonable access, including moving utilities or disrupting service, to the site or vessel to employees, agents and contractors of the department to conduct response actions, and to other persons intending to conduct necessary response actions;

(6)   “ if it has undertaken a response action or portion of a response action at the site, the agency, authority or public utility company conducted such response action or portion of a response action in compliance with the requirements of this chapter and the Massachusetts Contingency Plan; and

(7)   it did not know or have reason to know of the presence of oil or hazardous material on the site when it came into possession of the right of way.

For purposes of this subsection, the phrase “public utility company” means the Massachusetts Wholesale Electric Company established pursuant to chapter seven hundred and seventy-five of the acts of nineteen hundred and seventy-five, or any successor thereto, Massachusetts municipal light departments organized under chapter one hundred and sixty-four or any other special law, and Massachusetts gas and electric companies made subject to the jurisdiction of the department of telecommunications and energy by any provision of law except chapter one hundred and ten A of the General Laws and chapter six hundred and fifty-one of the acts of nineteen hundred and ten, as amended or the “Massachusetts Bay Transportation Authority” pursuant to chapter one hundred and sixty one A, section forty one, as amended.