

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

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Daniel E. Bosley**

*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 to promote reliable and high quality utility service in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Daniel E. Bosley	1st Berkshire

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3281 OF 2007-2008.]

## The Commonwealth of Massachusetts

—————  
In the Year Two Thousand and Nine  
—————

### AN ACT TO PROMOTE RELIABLE AND HIGH QUALITY UTILITY SERVICE IN THE COMMONWEALTH.

*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. . Section 40B of chapter 82 of the General Laws, as appearing in the 2006 Official  
2 Edition, is hereby amended by adding the following paragraph:-

3

4           The designation markings required by this section shall be performed by trained permanent employees of  
5 the utility unless otherwise authorized by a collective bargaining agreement. If no such trained permanent  
6 employees are available, the department of public utilities may certify and license outside companies to  
7 perform such designation markings. Moreover, to receive a building permit from any municipality, or  
8 political subdivision thereof, for any work requiring excavation, an individual shall provide certification  
9 of compliance with this section. Any utility that violates any provision of this section shall forfeit a  
10 penalty as determined by the department of public utilities. Penalties incurred under this section shall not  
11 be included as expenses in connection with the establishment of rates by said company.

12

13           SECTION 2. Section 1 of chapter 164 of the General Laws, as appearing in the 2006 Official Edition, is  
14 hereby amended by inserting after the definition of "Horizontal market power" the following definition:-  
15 "LNG", liquid natural gas.

16

17 SECTION 3. Said chapter 164 of the General Laws, as so appearing, is hereby amended by striking  
18 section 1C, as so appearing, and inserting in place thereof the following section:-

19

20 Section 1C. Any marketing company or other competitive or unregulated operation or entity of an electric  
21 or gas company shall be in the form of an affiliate of said company and shall be separate from any  
22 generation, transmission, or distribution company affiliate of the electric or gas company. The department  
23 shall promulgate standards of conduct which shall ensure the separation of such affiliates and which shall  
24 be consistent with the following provisions: (i) a distribution or gas company, or an affiliate thereof, shall  
25 not directly or indirectly use proceeds obtained from providing regulated services, or assets obtained with  
26 such proceeds, to subsidize non-regulated services; said prohibition shall extend to the use of vehicles,  
27 service tools, instruments, and employees, and the costs, salaries and benefits related thereto; (ii) a  
28 distribution or gas company shall not give any affiliates any preference over non-affiliated suppliers or  
29 customers thereof in matters relating to any product or service; (iii) all products, services, discounts,  
30 rebates, and fee waivers offered by a distribution or gas company shall be available to all customers and  
31 suppliers simultaneously, to the extent technically possible, on a comparable basis; (iv) a distribution or  
32 gas company shall process all same or similar requests for any product, service, or information in the  
33 same manner and within the same period of time; (v) a distribution or gas company shall not condition the  
34 provision of any product, service, or rate agreement by the distribution or gas company to the provision of  
35 any product or service to which an affiliate is involved; (vi) a distribution or gas company shall not share  
36 with any affiliate any market information acquired or developed by the distribution or gas company in the  
37 course of responding to requests for distribution or gas service or any proprietary customer information  
38 including, but not limited to, mailing lists, marketing information, and other customer related information,  
39 unless the use of such information is available to all commercial businesses on a non-discriminatory  
40 basis; (vii) a distribution or gas company shall refrain from presenting that any advantage accrues to  
41 customers or others in the use of its services as a result of that customer or others dealing with any such  
42 affiliate; (viii) a distribution or gas company shall not engage in joint advertising or marketing programs  
43 with any affiliate; and (ix) employees of a distribution or gas company shall not be shared with, and shall  
44 be physically separated from those of, any generating or marketing affiliate.

45

46 Upon the filing of a written complaint with the department requesting determination of compliance by a  
47 distribution or gas company, or an affiliate of a distribution or gas company, with the provisions of this  
48 section or any rule, order, or other action promulgated pursuant thereto, the department shall investigate  
49 the complaint, and upon the determination that there are reasonable grounds to proceed, the department

50 shall promptly initiate formal complaint proceedings. If the department determines that there is no  
51 reasonable basis for initiating a formal complaint proceeding, it shall so advise, in writing, the person  
52 filing such written complaint within 90 days. The department shall establish such penalties as necessary to  
53 assure compliance; provided, however, that any penalty incurred under this section shall not be included  
54 as expenses in connection with the establishment of rates by said distribution or gas company. Any final  
55 judgment or determination issued by the department, as a result of an investigation or otherwise, that an  
56 electric or gas company or an affiliate thereof has violated either (1) the provisions of this section; or (2)  
57 any rule, order, or settlement promulgated pursuant thereto, shall be prima facie evidence in any civil  
58 action against the distribution or gas company or its affiliate to recover damages or obtain injunctive  
59 relief.

60

61 A violation of this section shall constitute an unfair or deceptive act or practice under the provisions of  
62 chapter 93A, notwithstanding any contrary provision of any other law of the commonwealth or any  
63 exemption provided by said chapter 93A.

64

65 It shall be the duty of the Attorney General of the Commonwealth to institute proceedings in the superior  
66 court to prevent and restrain violations of this section. When the Attorney General has reason to believe  
67 an electric or gas company or its affiliate is engaging in a violation of this section, the Attorney General  
68 shall bring an action to enjoin the electric or gas company, the affiliate, or both, from engaging in a  
69 violation of this section.

70

71 SECTION 4. Subsection (b) of section 1E of said chapter 164 of the General Laws, as so appearing, is  
72 hereby amended by striking out, in line 16, the words "the effective date of this act" and inserting in place  
73 thereof the following words:- November 1, 1997.

74

75 SECTION 5. Said subsection (b) of said section 1E of said chapter 164 of the General Laws, as so  
76 appearing, is hereby further amended by striking out the last sentence and inserting in place thereof the  
77 following sentences:

78 At the time of any filings made pursuant to this section, if staffing levels have decreased below those in  
79 effect on November 1, 1997, the department shall hold evidentiary hearings to determine if staffing levels  
80 in said company are adequate; provided further, that unless the company establishes, by clear and

81 convincing evidence, that said staffing levels are adequate, the department shall hold that staffing levels  
82 within any function, department, or work unit, below those in existence on November 1, 1997 are unsafe  
83 and therefore not in compliance with this section. The results of the hearings shall be binding on both  
84 parties and the civil penalty for non-compliance shall be no less than \$10,000 per day; provided, however,  
85 that the maximum civil penalty shall not exceed \$500,000 for any related series of violations. Nothing in  
86 this paragraph shall prevent reduction of forces below the November 1, 1997 level through early  
87 retirement and severances negotiated with labor organizations before said date. The preceding provisions  
88 of this paragraph notwithstanding, in no event shall the department fail to establish benchmarks for  
89 employee staffing levels for each distribution, transmission and gas company by September 1, 2009,  
90 regardless of whether any company has at any time used, implemented or discontinued the use of any set  
91 of performance based rates.

92

93 SECTION 6. Subsection (7) of section 1F of said chapter 164 of the General Laws, as so appearing, is  
94 hereby amended by inserting after the number "1997", in line 241, the following words:-

95 and, in accordance with Section 1E, shall establish benchmark staffing levels adequate to ensure that  
96 service quality and reliability do not decline below levels that existed on November 1, 1997.

97

98 SECTION 7. Section 75A of said chapter 164 of the General Laws, as so appearing, is hereby amended  
99 by adding the following paragraph:-

100 Any new natural gas service shall be initially activated into a consumer's residence or business only by  
101 qualified personnel under state and federal regulations. Upon installation of a meter measuring gas  
102 supplied to any premises, only the authorized permanent employees of the gas company completing said  
103 installation shall be authorized to turn on the gas supply; provided further, that the newly installed meter  
104 shall remain locked on the service side by the gas company until the local gas inspector inspects the  
105 installation of piping to the new gas appliance(s). Upon the successful completion of the inspection, the  
106 lock shall only be removed by an authorized permanent employee of the gas company; provided further,  
107 that said permanent employee of the gas company shall then light all gas appliances and check all gas  
108 related equipment. Any gas company that violates any provision of this section shall forfeit a penalty as  
109 determined by the department. Penalties incurred under this section shall not be included as expenses in  
110 connection with the establishment of rates by said company.

111

112 SECTION 8. Section 75F of said chapter 164 of the General Laws, as so appearing, is hereby amended by  
113 striking out, in lines 8-9, the words "one hundred dollars" and inserting in place thereof the following  
114 number:- \$1,000.

115

116 SECTION 9. Section 76 of said chapter 164 of the General Laws, as so appearing, is hereby amended  
117 adding the following paragraph:-

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119 The department shall require gas companies to instruct their authorized permanent employees to annually  
120 survey their gas piping system for leak detection. Each gas service provided by a gas company or  
121 municipal lighting plant to a consumer, shall be inspected for corrosion and leak surveyed as required by  
122 all state and federal regulations by the company or municipal lighting plant at the premises of the  
123 consumer.

124 Upon discovery of a natural gas leak, said leak shall be investigated, graded, logged and monitored by  
125 authorized permanent employees of the gas company and reported to the department; provided further,  
126 that officers and employees of the department shall randomly inspect reported leaks on a regular basis.  
127 For said regular inspections the department shall collect from the gas company such reasonable fees as it  
128 may from time to time prescribe. Any gas company or municipal lighting plant which violates any  
129 provision of this section, unless in the opinion of the department such violation is due to unavoidable  
130 cause, accident or lack of materials, shall forfeit \$25 for each service which is not inspected for corrosion  
131 and leak surveyed as provided herein. Penalties, fees and forfeitures incurred under this section shall not  
132 be included as expenses in connection with the establishment of rates by said company.

133

134 SECTION 10. Chapter 164 of the General Laws, as so appearing, is hereby amended by inserting after  
135 section 105A the following two sections:-

136

137 Section 105B. Every gas corporation or municipal gas department engaged in the distribution of gas  
138 within the commonwealth shall annually conduct a survey of all schools, student quarters, day care  
139 centers, kindergartens, pre-schools, churches, hospitals, elder centers, nursing homes, rehabilitation  
140 centers, libraries, fire stations, police stations, theatres, arenas, and all public buildings within their  
141 service territories by authorized permanent employees of the gas company. Said survey shall include tests  
142 for gas leakage and the visual inspection of all accessible gas facilities and gas appliances in the structure.

143 Any gas company that violates any provision of this section shall forfeit a penalty as determined by the  
144 department. Penalties incurred under this section shall not be included as expenses in connection with the  
145 establishment of rates by said company.

146

147 Section 105C. All LNG facilities in the commonwealth will have at least one person in the control room  
148 at all times while the LNG facility is storing LNG.

149

150 SECTION 11. Section 115A of said chapter 164 of the General Laws, as so appearing, is hereby amended  
151 by striking out, in line 10, the words "five dollars" and inserting in place thereof the following number:-  
152 \$50.

153

154 SECTION 12. Section 116B of said chapter 164 of the General Laws, as so appearing, is hereby amended  
155 by adding the following two paragraphs:-

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157 All paving contractors are to utilize a one-call system to allow operators to mark out involved gate boxes  
158 before paving if they have not already been raised prior to a paving project initiation. No paving  
159 contractor shall, except in an emergency, pave any public way unless notifying the "one-call" system  
160 and/or the gas company(s) in that jurisdiction at least 72 hours, exclusive of Saturdays, Sundays and legal  
161 holidays but not more than 30 days before the proposed paving is to be conducted. Such initial notice  
162 shall set forth a description of the paving location in the manner as herein defined. In addition, such initial  
163 notice shall indicate the paving project in its entirety. The paving contractor can place a paving ring  
164 around the valve box and the operator can raise the box after the paving. This should be required whether  
165 the paver plans to cut grade or not.

166 Any company found by the department to have willfully violated this section shall be assessed a penalty  
167 in an amount not to exceed \$500 for each violation. Penalties and fees incurred under this section shall  
168 not be included as expenses in connection with the establishment of rates by said company.

169

170 SECTION 13. Said chapter 164 of the General Laws, as so appearing, is hereby amended by striking out  
171 section 124I, as so appearing, and inserting in place thereof the following section:-

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173 Section 124I. Each gas company shall upon the termination of service by a customer shut off said service  
174 within 30 days after receiving notice of the termination of service by said customer. Said company shall  
175 use only authorized permanent employees in complying with this section.

176

177 SECTION 14. Said chapter 164 of the General Laws, as so appearing, is hereby further amended by  
178 inserting after section 124I the following section:-

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180 Section 124J. Any company found by the department to have willfully violated sections 124A to 124I,  
181 inclusive, shall be assessed a penalty after a hearing by the department, in an amount not to exceed  
182 \$1,000. Penalties and fees incurred under said sections 124A through 124I shall not be included as  
183 expenses in connection with the establishment of rates by said company.

184

185 SECTION 15. Section 29 of chapter 65 of the Acts of 2004, is hereby amended by striking out, in line 8,  
186 the word "except" and inserting in place thereof the following word:- including.

187

188 SECTION 16. Section 29 of chapter 65 of the Acts of 2004, is hereby amended by striking out, in line 21,  
189 the word "except" and inserting in place thereof the following word:- or.