

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Geraldine Creedon

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 roadway re-openings and safety.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Gerldine Creedon	11th Plymouth
Louis L. Kafka	8th Norfolk
Christine E. Canavan	10th Plymouth
Michael Brady	9th Plymouth
Denise Provost	27th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO ROADWAY RE-OPENINGS AND SAFETY.

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

The General Laws are hereby amended by inserting after chapter 84 the following chapter:

Chapter 84A

Roadway Re-openings Safety

1 **SECTION 1.** The department of highway shall conduct construction activities and ensure development
2 of project plans for state roads and bridges in coordination with municipal agencies to achieve the
3 following:-

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5 Ensure the development of project plans and construction timelines.

6 Communicate with all project participants, including investor owned utilities, to ensure that all
7 are aware of project timelines and will perform their respective functions within the prescribed
8 time frame.

9 Develop a form that presents road closing and detour related information to include, but not be
10 limited to, traffic volumes re-routed and detour length to determine incremental mileage, fuel
11 consumed and green house gas emissions resulting from delayed road openings.

12 In the event of a delayed road re-opening and that a completed copy of the form detailed above
13 is provided to the applicable regulatory authority.

14 Advise the applicable regulatory authority at the end of each delayed roadway re-opening and
15 provide that regulatory authority with a completed form detailing the cumulative impacts
16 resulting from that project delay.

17 Coordinate with the State Police to cite for non-relocated public utility assets that pose a safety
18 hazard in state roadways at the end of road construction projects citations shall be sent to the
19 utility and a copy to the appropriate agency. Assist local agencies in developing a project
20 timeline and completion of the above form for road closings within their jurisdiction. In the
21 event of a delayed road re-opening in a local jurisdiction, provide a complete property of the
22 form to the appropriate regulatory authority. At the end of a delayed road re-opening in a local
23 jurisdiction, provide the regulatory authority with a completed form detailing the cumulative
24 impacts resulting from the project delay.

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26 **SECTION 2.** Municipal Public Works' Departments shall have the responsibility to ensure roads within
27 their jurisdiction are operable and in safe conditions. Such departments shall be responsible for, but not
28 limited to, the following:-

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30 Ensure the development of project plans and construction timelines.

31 Assist the department of highways to complete their form for each road closure within its
32 jurisdiction as part of the initial project planning process.

33 Communicate with all project participants, including public utilities, to ensure that all are aware
34 of the project timelines and will perform their respective functions within the prescribed time
35 frame.

36 In the event of a delayed road re-opening due to a public utility, provide information on each
37 such delayed road re-opening to the department of highways.

38 Advise the department of highways of the end of each delayed road re-opening.

39 Coordinate with local police to cite for non-relocated public utility assets that pose a safety
40 hazard in municipally operated roadways at the end of road construction projects. Municipal
41 citations will be sent to the attention of the traffic coordinator for that utility and a copy to the
42 concerned regulatory authority.

43 The department of public works may contact the utility for assistance in resolving right-of-way
44 issues with the utility. If the right-of-way issue is not resolved within 30 days from the date of
45 notice, the department of public works or such other municipal agency with responsibility over
46 the issue, may contact the appropriate regulatory authority for assistance in resolving the issue.

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48 **SECTION 3.** The department of public utilities shall perform the following functions:-

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50 Ensure that all investor owned public utilities always maintain designated traffic coordinators
51 and contact information, including a full address, phone, fax, and email address. This database
52 shall be readily available on the DPU website and shall be maintained at minimum, monthly.

53 Shall review the job/position description of the traffic coordinators submitted by each investor
54 owned utility and ensure that it complies with the intent of this law and shall advise each utility
55 of any discrepancies in the content of the job/position.

56 Shall maintain a file of current job/position descriptions for the traffic coordinator for each
57 investor owned public utility.

58 Reasonable and just expenses associated with establishment and operation of a utility traffic
59 coordinator position within each utility shall be allowable for ratemaking purposes.

60 Maintain information files on all delays in public roadway openings and public roadway safety
61 related issues and accumulate those files for each investor owned utility from the time of
62 enactment of this law through the completion of the next rate case for that utility.

63 Subsequently, a traffic file will be maintained for each investor owned public utility during the
64 time interval between rate cases for each such utility.

65 The commissioner of the DPU shall review and consider the traffic related delays and safety
66 violations will be considered to be a positive factor in rate making determination for that utility.

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68 Shall ensure that no municipal public roadway safety related fines or other such civil penalties
69 are not passed onto the ratepayers of that utility, but shall be for the account of the share
70 holders of that utility. Municipal public roadway safety related fines or other such civil penalties
71 incorrectly included in rate base shall be removed and the utility earnings reduced by no more
72 than 10 times the amount improperly accounted for.

73 Shall prepare an annual report on all utility related delays on roadway re-openings and roadway
74 safety issues. This report shall also include information on incremental distances driven, fuel
75 consumed, and greenhouse gas emissions due to delayed roadway re-openings for each utility.

76 The report should be prepared annually for each calendar year and presented to the
77 undersecretary of energy within the Executive Office of Energy and Environmental Affairs
78 (EOEEA) not later than the end of the first calendar quarter.

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80 **SECTION 4.** The department of telecommunications and cable shall perform the following functions:

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Ensure that all investor owned public utilities always maintain a designated traffic coordinator.

Maintain an up-to-date database of all public utility traffic coordinators and contact information, including a full address, phone, fax, and email address. This data base shall be readily available on the DTC website and shall be maintained at minimum, monthly.

The DTC shall review the job/position description of the traffic coordinators submitted by each investor owned utility and ensure that it complies with the intent of this law and shall advise each utility of discrepancies in the content of the job/position description.

The DTC shall maintain a file of current job/position descriptions for the traffic coordinator for each investor owned public utility.

Reasonable and just expenses associated with the establishment and operation of a utility traffic coordinator position within each utility shall be allowable for ratemaking purposes.

Maintain information filed on all delays in public roadway openings and public roadway safety related issues and accumulate those files for each investor owned utility from the time of enactment of this law through the completion of the next rate case for that utility. Subsequently, a traffic file will be maintained for each investor owned public utility during the time interval between rate cases for each such utility.

The commissioners of the DTC shall review and consider the traffic related delays and safety issues in each such utilities rate making case. The absence of or infrequent reopening delays and traffic safety violations will be considered a positive factor in rate making determination for that utility.

The DTC shall ensure that no municipal public roadway safety related fines or other such civil penalties are not passed on to the ratepayers of that utility, but shall be for the account of the shareholders of that utility. Municipal public roadway safety related fines or other such civil penalties incorrectly included in rate base shall be removed and the utility earnings reduced by no more than 10 times the amount improperly accounted for.

The DTC shall prepare an annual report on all utility related delays on roadway re-openings and roadway safety issues. This report shall also include information on incremental distances driven, fuel consumed, and greenhouse gas emissions due to delayed roadway re-openings for each utility. The report should be prepared annually for each calendar year and presented to the undersecretary the office of consumer affairs and business regulation not latter than the end of the first calendar quarter.

SECTION 5. Public utilities shall have the following responsibilities.

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116 They shall appoint a traffic coordinator and provide the full contact information, including a full
117 address, phone, fax, and email address to the responsible regulatory authority within the
118 commonwealth. If the traffic coordinator is replaced, the utility shall ensure that the contact
119 information is fully updated at the time of the personnel change.

120 The traffic coordinator shall be the designated representative, who will be responsible within
121 that utility to perform these and other functions such as, but not limited to, the following:

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123 Maintain the schedules and information on each road project that may require the relocation,
124 removal or replacement or other action on the part of the utility to permit the timely and safe
125 re-opening of public roadways. Travel to roadway work sites or to other locations to meet with
126 the department of highways and local departments of public works as required to effectively
127 understand and coordinate roadway projects.

128 Coordinate the assignment of utility workers to work on utility assets to ensure the timely
129 reopening and/or safe operation of public roadways in line with each road construction time
130 table.

131 The event that utility assets are preventing a roadway reopening and/or posing a roadway
132 safety hazard and are cited and fees or civil penalties assessed, the traffic coordinator shall be
133 delegated the authority to effect payment of such penalty to the proper authority assessing
134 such penalty. In the event of delays in paying civil penalties, the traffic coordinator shall have
135 the delegated the authority and assigned responsibility to effect payment for late payment
136 penalties.

137 The traffic coordinator shall assist local departments of public works to resolve right-of-way
138 issues in a timely manner.

139 The traffic coordinator shall ensure that no civil penalties or late payment fees are included as
140 reimbursable expenses to the ratepayers of that utility and shall ensure that such fees and
141 penalties are for the account of the shareholders.

142 The traffic coordinator shall report to a senior officer of the utility who is responsible for utility
143 operations.

144 The job/position description for the traffic coordinator shall be prepared and a copy shall be
145 sent to the applicable commonwealth regulatory authority, which shall review each job
146 description to ensure that each job/position description corresponds with the intent and
147 provisions of this law. The utility will consider comments from the regulatory authority and
148 modify the job/position description accordingly and provide a revised job/position for the
149 regulatory body to maintain on file.

150 Just and reasonable expenses associated with the position and function of the traffic
151 coordinator shall be allowable expenses and recoverable from ratepayer revenue.

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153 **SECTION 6.** Cities and towns shall have the authority to perform the following functions and they may
154 cite a public utility with a roadway safety violation if they have public utility assets in an open public
155 roadway. Safety fines shall be limited to \$100 per utility asset per day. They may cite a public utility
156 with roadway safety violations if utility assets in a roadway prevent it from being re-opened at the
157 completion of a roadway construction project, and such fines shall be limited to \$250 per utility asset
158 per day city and town citations shall be prepared in the name of the utility and sent to the attention of
159 the traffic coordinator.

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161 If the utility has been notified of roadway construction plans and elects not to relocate utility
162 assets within the roadway construction timeframe, this law shall hold the utility responsible for
163 their decision not to relocate utility assets.

164 If the utility appeals any safety violation fines and the fines are upheld in court, the utility shall
165 compensate that municipality for legal fees charged to represent that municipality, fully
166 weighted salary and benefit costs of the municipal authorities to prepare the appeal and attend
167 the appeal and travel expense to and from the court appeal. A statement of total costs incurred
168 shall be prepared by that municipality and sent to the traffic coordinator for the concerned
169 utility for reimbursement.

170 Late payment of municipal fines or reimbursement of appeal costs shall bear a late payment fee
171 if not paid within thirty days from the date sent. Unpaid amounts shall bear a late payment rate
172 no greater than the fee charged to municipal residents for the late payment of real estate taxes.
173 Late payment fees shall bear the late payment fee rate from the time the notice is sent until the
174 date the total payment due is received.

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