

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

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

**John H. Rogers**

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*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 .**

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PETITION OF:

NAME:

John H. Rogers

DISTRICT/ADDRESS:

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:*

1 Chapter 40 of the General Laws is hereby amended by inserting the  
2 following new section:

3 Chapter 40, Section 4J. The Statewide Municipal Mutual  
4 Assistance Program.

5 (a)(i) "The statewide municipal mutual assistance agreement for  
6 public works" is defined as a comprehensive statewide agreement  
7 entered into by participating governmental units for the facilitation  
8 and provision of sharing of public works resources across  
9 jurisdictional lines in the case of public works incidents that require  
10 assistance from one or more additional municipalities.

11 . (ii) "Governmental unit" is defined as a city, town, county, district  
12 as defined in Section 1A. however constituted, water or sewer  
13 commission established under the provisions of chapter 40N or  
14 pursuant to a special law, fire district, or other political entity of the  
15 Commonwealth or its municipalities.

16 (b) There shall be a statewide mutual assistance agreement  
17 developed for Public Works activities, by the Statewide Municipal  
18 Mutual Assistance Advisory Committee that covers Public Works  
19 services, personnel, equipment, supplies and facilities to prepare  
20 for, prevent, mitigate, respond to and recover from incidents that

21 require assistance from additional municipalities, consistent with  
22 the provisions herein. Nothing in this section shall establish or  
23 apply to mutual aid agreements among local public safety agencies.  
24 All 351 municipalities of the commonwealth shall be required to opt  
25 into the statewide municipal mutual assistance agreement, within  
26 one year of the enactment of the legislation.

27 The chief executive officer of a city or town, or as otherwise  
28 specified by statute or charter must sign the mutual assistance  
29 agreement. If a community does not execute the agreement, it is  
30 assumed that the community will not be a participant. Participation  
31 shall exist for a period of ten years. Other governmental units not  
32 under the direction and control of a commonwealth municipality  
33 shall be authorized to sign on to the statewide mutual aid agreement  
34 on a form filed with and prescribed by the Statewide Municipal  
35 Mutual Assistance Advisory Committee. In addition, governmental  
36 units from a municipality directly adjacent to a commonwealth  
37 municipality, but in another state, shall be able to sign on to the  
38 statewide mutual aid agreement if duly authorized on a form  
39 prescribed by the Statewide Municipal Mutual Assistance  
40 Advisory Committee.

41 (c) There will be an annual open enrollment period for those  
42 communities who are not part of the Statewide Municipal Mutual  
43 Assistance Program. The date of the open enrollment period and  
44 any other requirements will be established by the Statewide  
45 Municipal Mutual Assistance Advisory Committee. In addition, a  
46 community may opt out of the program at any time by informing  
47 the Statewide Mutual Assistance Advisory Committee, in writing,  
48 of its intent to terminate participation in the program. This request  
49 for removal from the program shall be executed by the chief  
50 executive officer of a city or town, or as otherwise specified by  
51 statute or charter.

52 (d) There shall be a Statewide Municipal Mutual Assistance  
53 Advisory Committee that shall consist of one appointee made by  
54 the following parties" the Massachusetts Highway Association, the  
55 New England Chapter of the American Public Works Association  
56 (Massachusetts Representative), the New England Water  
57 Environment Association (Massachusetts Representative),  
58 Massachusetts Tree Wardens Association and the Mass Water Works

59 Association. One appointee from the Executive Office of Public  
60 Safety and one member from each of the state's Regional Planning  
61 Agencies shall serve as Ex-officio members.

62 (e) The Statewide Municipal Mutual Assistance Advisory  
63 Committee shall develop procedural plans, protocols and programs  
64 for intrastate cooperation to be used by public works agencies in  
65 response to an incident.

66 (f) Each participating governmental unit shall identify no less than  
67 one, but no more than three points of contact within its public works  
68 agency, and shall provide for contacts consistent with the  
69 governmental units so-called continuation of operation/continuation  
70 of governance plan.

71 (g) A participating governmental unit may request the assistance  
72 of one or more participating governmental units to:

73 (1) Manage public works incident response or recovery if they do  
74 not possess the ability to do so effectively, independently or;

75 (2) Conduct public works incident response or recovery related  
76 exercises, testing or training.

77 (h) A request for assistance to a participating governmental  
78 unit shall be made by and to: the chief executive officer of a city or  
79 town, or as otherwise specified by statute or charter, or one of three  
80 designated points of contact. An oral request shall be allowable but  
81 must be followed in writing no later than twenty-four hours after the  
82 oral request is made.

83 The request must include the following information:

84 (1) A description of the public works incident response and  
85 recovery functions for which assistance is needed.

86 (2) The amount and type of public works services, equipment,  
87 supplies, materials, personnel and other resources requested and a  
88 point of contact at the location.

89 (3) The place and time where assistance is needed and where the  
90 point of contact will be.

91 (i) The responding governmental unit shall not be required to  
92 respond to a request and may choose to do so only if responding  
93 would not jeopardize the participating municipality's own  
94 reasonable protection.

95 (j) The dispatch of public works resources under the statewide  
96 mutual assistance agreement shall operate under the direction of

97 their parent agency. Tactical operational control of resources shall  
98 be under the direction and control of the requesting jurisdiction.  
99 The administration and coordination of the statewide mutual aid  
100 agreement shall be the responsibility of the Statewide Municipal  
101 Mutual Assistance Advisory Committee.

102 (k) Reimbursement for any and all public works services  
103 performed under the statewide municipal mutual assistance  
104 agreement is presumed, but may be waived in writing by a  
105 participating municipality prior or subsequent to responding to an  
106 incident through a supplemental agreement. This section shall not  
107 provide for reimbursement of any kind outside of what is agreed to  
108 by the individual governmental units.

109 (l) Notwithstanding section 4A of chapter 40 of the general laws,  
110 the chief executive officer of a city or town, or as otherwise specified  
111 by statute or charter, is hereby authorized to enter into supplemental  
112 agreements on behalf of such unit with other governmental units to  
113 further define the rights and responsibilities of each party for the  
114 provision of mutual aid pursuant to the statewide municipal mutual  
115 assistance agreement established herein.

116 (m) While in transit to, returning from, and during a mutual  
117 assistance response for another governmental unit, a participating  
118 public works employee of a governmental unit, or volunteer acting  
119 officially under the authorization of the governmental unit, that is a  
120 party to the statewide municipal mutual assistance agreement  
121 shall maintain the right of indemnification granted by law, or by his  
122 home governmental unit, should it exist, for all claims arising out of  
123 any action within the scope of employment in accordance with the  
124 statewide municipal mutual assistance agreement pursuant to this  
125 section.

126 (n) All public works employees and equipment requested and  
127 deployed pursuant to the statewide municipal mutual assistance  
128 agreement shall be covered for liability, immunity, employee  
129 benefits, worker's compensation and insurance, by their employer,  
130 as if they were in their own jurisdiction. Participating governmental  
131 units may, by supplemental agreement with one or more  
132 participating governmental units, address issues such as, but not  
133 limited to, pay and benefit for government unit employees and  
134 volunteers, insurance, indemnification, injury compensation and

135 other operational matters related to services provided under a  
136 mutual aid response.

137 (o) Barring a supplemental agreement to the contrary, public  
138 works employees shall receive the same compensation as if they  
139 were operating in their own jurisdiction while performing services  
140 under the statewide municipal mutual assistance agreement.

141 (p) All activities performed under the statewide municipal mutual  
142 assistance agreement by governmental units are hereby declared to  
143 be governmental function. Neither the parties, nor, except in cases  
144 of willful misconduct, gross negligence, or bad faith, their personnel  
145 complying with or reasonable attempting to comply with the mutual  
146 aid agreement or any ordinance, rule or regulation enacted or  
147 promulgated pursuant to the provisions of this section shall not be  
148 held liable for the death or injury to persons or for damage to  
149 property as a result of any such activity.

150 (q) Public works employees of a governmental unit that is a party  
151 to the statewide municipal mutual assistance agreement shall be  
152 granted recognition of their respective jurisdiction, authority,  
153 licenses or permits outside their original jurisdiction while  
154 operating under the statewide municipal mutual assistance  
155 agreement.

156 (r) This section shall not affect inter-local agreements established  
157 pursuant to section 4A of chapter 40 of the general laws.

158 (s) The Statewide Municipal Mutual Assistance Committee shall  
159 develop and make available to participating governmental units,  
160 forms to facilitate requests for aid, and to facilitate record keeping  
161 of movement of public works equipment and personnel.