

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph F. Wagner

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 operating and management of rights of way.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Joseph F. Wagner	8th Hampden

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 886 OF 2007-2008.]

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO THE OPERATING 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:

1 SECTION 1. Section 5 of chapter 21E of the General Laws, as appearing in the 2006 Official Edition, is
2 hereby amended by striking out subsection (j) and inserting in place thereof the following subsection:-
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4 (j) An agency or authority of the commonwealth and a public utility company that owns, holds
5 title to, possesses an easement in, or maintains any property interest in, a right of way that is a site at
6 which the department has incurred costs for response actions shall not be liable to the commonwealth
7 for those costs if the agency, authority, or public utility company, respectively, can establish by a
8 preponderance of the evidence that:

9
10 (1) it is not the owner or operator of any building, structure, installation, equipment, pipe or
11 pipeline, including any pipe into a sewer or publicly-owned treatment works, well, pit, pond, lagoon,
12 impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft from which the
13 release or threat of release has occurred;

14
15 (2) it is not a person or the successor to a person described in clauses (2), (3), (4) or (5) of
16 paragraph (a);

17
18 (3) no act of the agency, authority, or public utility company, or of the agency's, authority's or
19 public utility company's employee or agent, caused or otherwise contributed to the release or threat of
20 release or caused the release or threat of release to become worse than it otherwise would have been;
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22 (4) it notified the department immediately upon obtaining knowledge of a release or threat of
23 release for which notification is required pursuant to, and in compliance with, section 7 or regulations
24 promulgated pursuant thereto;

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

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

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

36

37 For purposes of this subsection, the phrase "public utility company" means the Massachusetts
38 Wholesale Electric Company established pursuant to chapter 775 of the acts of 1975, or any successor
39 thereto, Massachusetts municipal light departments organized under chapter 164 or any other special
40 law, Massachusetts gas and electric companies made subject to the jurisdiction of the department of
41 telecommunications and energy by any provision of law except chapter 110A of the General Laws and
42 chapter 651 of the acts of 1910, as amended or the Massachusetts Bay Transportation Authority
43 pursuant to section 41 of chapter 161A, as amended.