

SENATE No.

The Commonwealth of Massachusetts

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

In the Year Two Thousand and Nine

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:

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

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

9 (1) it is not the owner or operator of any building, structure, installation, equipment, pipe or
10 pipeline, including any pipe into a sewer or publicly-owned treatment works, well, pit, pond,

11 lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft
12 from which the release or threat of release has occurred;

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

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

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

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

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

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

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

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