

**HOUSE . . . . . No. 3236**

By Mr. Rogers of Norwood, petition of John H. Rogers relative to price adjustments for asphalt and fuel in the Commonwealth. State Administration and Regulatory Oversight.

**The Commonwealth of Massachusetts**

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO PRICE ADJUSTMENT.

*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 44J of Chapter 149 of the General Laws, as appearing  
2 in the 2004 Official Edition, is hereby amended at the end thereof  
3 by inserting the following new subsection:—

4 (8) Notwithstanding the provisions of this section or any other  
5 general or special law to the contrary; a contract awarded under  
6 Sections thirty-eight A1/2 to thirty-eight O, inclusive, of Chapter  
7 seven; this section and Sections forty-four B to forty-four H,  
8 inclusive, of this chapter, and Section thirty-nine M of Chapter  
9 thirty; in excess of \$100,000 shall include the following in  
10 writing:—

11 “Price Adjustment for Asphalt”. The Base Price of asphalt  
12 cement and on a project is a fixed price determined by the munic-  
13 ipality and found in the notice to contractors. The price adjust-  
14 ment will be based on the difference in price for the asphalt  
15 component only from the Base price to the period price. It shall  
16 not include transportation or other charges. The Period Price of  
17 asphalt cement for a two month period (FOB terminal) will be  
18 determined by the municipality by averaging the prices posted at  
19 the beginning, middle and end of each two month period by two  
20 or more suppliers. The year will be divided into six two-month  
21 periods beginning January 1. The contract price of the hot mix  
22 asphalt mixture will be paid under the respective item in the con-

23 tract. The price adjustment, as herein provided, upwards and  
24 downwards, will be made as work is performed, using the most  
25 previous price adjustment Item until the period price is estab-  
26 lished. The asphalt content for the reclaimed asphaltic pavement  
27 (RAP) will be the percent established in the bid specifications. For  
28 all other hot mix asphalt mixtures, the content shall be 5.5. %  
29 (0.055) by weight regardless of the percentages established in the  
30 bid specifications. The Price Adjustment will be a separate pay-  
31 ment item. It will be determined by multiplying the number of  
32 tons of hot mix asphalt mixtures placed during each previous two  
33 month period by asphalt content percentage (0.055)(or by the  
34 actual (RAP) asphalt content percentage) times the difference in  
35 price between Base Price and Period Price of asphalt. No price  
36 adjustment will be allowed beyond the completion date of the  
37 contract, unless the municipality approved of the extension of  
38 time. Price Adjustment for Fuel. This fuel price adjustment is  
39 inserted in this contract because the national and worldwide  
40 energy situation has made the future cost of fuel unpredictable.  
41 This adjustment will provide for either additional compensation to  
42 the Contractor or repayment to the municipality, depending on an  
43 increase or decrease in the average price of diesel fuel or gasoline.  
44 This adjustment will be based on fuel usage factors for various  
45 items of work developed by the Massachusetts Highway Depart-  
46 ment through the Highway Research Board in Circular 158, dated  
47 July 1974. These factors will be multiplied by the quantities of  
48 work done in each item during the two-month period and further  
49 multiplied by the variance in price from the Base Price to the  
50 Period Price. The Base Price of Diesel Fuel and Gasoline will be a  
51 price fixed in the "Notice to Contractors" of the Contract Docu-  
52 ments and Special Provisions, which includes State Tax. The  
53 Period Price will be the average of prices charged to the munici-  
54 pality including State Tax for the bulk purchases at the beginning,  
55 middle, and end of each two-month period. This adjustment will  
56 be effected only if the variance from the Base Price is 10% or  
57 more for a two-month period. The complete adjustment will be  
58 paid in all cases with no deduction of the 10% from either upward  
59 or downward adjustments. There will be six two-month periods a  
60 year, beginning with the January-February period. No adjustment  
61 will be paid for work done beyond the extended completion date

62 of any contract. Any adjustment (increase or decrease) to esti-  
63 mated quantities made to each item at the time of final payment  
64 will have the fuel price adjustment figured at the average period  
65 price for the entire term of the project for the difference of quan-  
66 tity.