

HOUSE No. 3281

By Mr. Bosley of North Adams, petition of Daniel E. Bosley for legislation to regulate staffing levels to enhance the delivery of reliable and high quality utility service in the Commonwealth. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT TO PROMOTE RELIABLE AND HIGH QUALITY UTILITY SERVICE IN THE COMMONWEALTH.

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 40A of chapter 82 of the General Laws,
2 as appearing in the 2002 Official Edition, is hereby amended by
3 inserting at the end thereof the following:—

4 The designation markings required by this section shall be
5 performed by trained permanent employees of the utility unless
6 otherwise authorized by a collective bargaining agreement. If no
7 such trained permanent employees are available, the department
8 of telecommunications and energy may certify and license outside
9 companies to perform such designation markings. Moreover, to
10 receive a building permit from any municipality, or political sub-
11 division thereof, for any work requiring excavation, an individual
12 shall provide certification of compliance with this section. Any
13 utility that violates any provision of this section shall forfeit a
14 penalty as determined by the department of telecommunications
15 and energy. Penalties incurred under this section shall not be
16 included as expenses in connection with the establishment of rates
17 by said company.

1 SECTION 2. Section 1C of Chapter 164 of the General Laws,
2 as appearing in the 2002 Official Edition, is hereby amended by
3 striking said section 1C and inserting in placed thereof the
4 following:—

5 Section 1C. Any marketing company or other competitive or
6 unregulated operation or entity of an electric or gas company shall
7 be in the form of an affiliate of said company and shall be sepa-
8 rate from any generation, transmission, or distribution company
9 affiliate of the electric or gas company. The department shall pro-
10 mulgate standards of conduct which shall ensure the separation of
11 such affiliates and which shall be consistent with the following
12 provisions: (i) a distribution or gas company, or an affiliate
13 thereof, shall not directly or indirectly use proceeds obtained from
14 providing regulated services, or assets obtained with such pro-
15 ceeds, to subsidize non-regulated services; said prohibition shall
16 extend to the use of vehicles, service tools, instruments, and
17 employees, and the costs, salaries and benefits related thereto;
18 (ii) a distribution or gas company shall not give any affiliates any
19 preference over non-affiliated suppliers or customers thereof in
20 matters relating to any product or service; (iii) all products, serv-
21 ices, discounts, rebates, and fee waivers offered by a distribution
22 or gas company shall be available to all customers and suppliers
23 simultaneously, to the extent technically possible, on a compa-
24 rable basis; (iv) a distribution or gas company shall process all
25 same or similar requests for any product, service, or information
26 in the same manner and within the same period of time; (v) a dis-
27 tribution or gas company shall not condition the provision of any
28 product, service, or rate agreement by the distribution or gas com-
29 pany to the provision of any product or service to which an affil-
30 iate is involved; (vi) a distribution or gas company shall not share
31 with any affiliate any market information acquired or developed
32 by the distribution or gas company in the course of responding to
33 requests for distribution or gas service or any proprietary cus-
34 tomer information including, but not limited to, mailing lists, mar-
35 keting information, and other customer related information, unless
36 the use of such information is available to all commercial busi-
37 nesses on a non-discriminatory basis; (vii) a distribution or gas
38 company shall refrain from presenting that any advantage accrues
39 to customers or others in the use of its services as a result of that
40 customer or others dealing with any such affiliate; (viii) a distrib-
41 ution or gas company shall not engage in joint advertising or mar-
42 keting programs with any affiliate; and (ix) employees of a
43 distribution or gas company shall not be shared with, and shall be

44 physically separated from those of, any generating or marketing
45 affiliate.

46 Upon the filing of a written complaint with the department
47 requesting determination of compliance by a distribution or gas
48 company, or an affiliate of a distribution or gas company, with the
49 provisions of this section or any rule, order, or other action pro-
50 mulgated pursuant thereto, the department shall investigate the
51 complaint, and upon the determination that there are reasonable
52 grounds to proceed, the department shall promptly initiate formal
53 complaint proceedings. If the department determines that there is
54 no reasonable basis for initiating a formal complaint proceeding,
55 it shall so advise, in writing, the person filing such written com-
56 plaint within 90 days. The department shall establish such penal-
57 ties as necessary to assure compliance; provided, however, that
58 any penalty incurred under this section shall not be included as
59 expenses in connection with the establishment of rates by said dis-
60 tribution or gas company. Any final judgment or determination
61 issued by the department, as a result of an investigation or other-
62 wise, that an electric or gas company or an affiliate thereof has
63 violated either (1) the provisions of this section; or (2) any rule,
64 order, or settlement promulgated pursuant thereto, shall be prima
65 facie evidence in any civil action against the distribution or gas
66 company or its affiliate to recover damages or obtain injunctive
67 relief.

68 A violation of this section shall constitute an unfair or decep-
69 tive act or practice under the provisions of chapter 93A, notwith-
70 standing any contrary provision of any other law of the
71 commonwealth or any exemption provided by said chapter 93A.

72 It shall be the duty of the Attorney General of the Common-
73 wealth to institute proceedings in the Superior Court to prevent
74 and restrain violations of this section. When the Attorney General
75 has reason to believe an electric or gas company or its affiliate is
76 engaging in a violation of this section, the Attorney General shall
77 bring an action to enjoin the electric or gas company, the affiliate,
78 or both, from engaging in a violation of this section.

1 SECTION 3. Section 1E(b) of Chapter 164 of the General
2 Laws, as so appearing, is hereby amended by striking in line 16
3 the words “the effective date of this act” and inserting in place
4 thereof the following:—
5 November 1, 1997

1 SECTION 4. Section 1E(b) of Chapter 164 of the General
2 Laws, as so appearing, is hereby amended by striking the last sen-
3 tence and inserting in place thereof the following:

4 At the time of any filings made pursuant to this section, if
5 staffing levels have decreased below those in effect on
6 November 1, 1997, the department shall hold evidentiary hearings
7 to determine if staffing levels in said company are adequate; pro-
8 vided further, that unless the company establishes, by clear and
9 convincing evidence, that said staffing levels are adequate, the
10 department shall hold that staffing levels within any function,
11 department, or work unit, below those in existence on
12 November 1, 1997 are unsafe and therefore not in compliance
13 with this section. The results of the hearings shall be binding on
14 both parties and the civil penalty for non-compliance shall be no
15 less than \$10,000.00 per day; provided, however, that the max-
16 imum civil penalty shall not exceed \$500,000 for any related
17 series of violations. Nothing in this paragraph shall prevent reduc-
18 tion of forces below the November 1, 1997 level through early
19 retirement and severances negotiated with labor organizations
20 before said date. The preceding provisions of this paragraph
21 notwithstanding, in no event shall the department fail to establish
22 benchmarks for employee staffing levels for each distribution,
23 transmission and gas company by September 1, 2005, regardless
24 of whether any company has at any time used, implemented or
25 discontinued the use of any set of performance based rates.

1 SECTION 5. Section 1F(7) of Chapter 164 of the General
2 Laws, as so appearing, is hereby amended by adding after the
3 phrase “1997” in line 224 the following:—

4 and, in accordance with Section 1E, shall establish benchmark
5 staffing levels adequate to ensure that service quality and relia-
6 bility do not decline below levels that existed on November 1,
7 1997.

1 SECTION 6. Section 75A of Chapter 164 of the General Laws,
2 as so appearing, is hereby amended by adding at the end thereof
3 the following new paragraph:—

4 “Upon installation of a meter measuring gas supplied to any
5 premises, only the authorized permanent employees of the gas

6 company completing said installation shall be authorized to turn
7 on the gas supply; provided further, that the newly installed meter
8 shall remain locked on the service side by the gas company until
9 the local gas inspector inspects the installation of piping to the
10 new gas appliance(s). Upon the successful completion of the
11 inspection, the lock shall only be removed by an authorized per-
12 manent employee of the gas company; provided further, that said
13 permanent employee of the gas company shall then light all gas
14 appliances and check all gas related equipment. Any gas company
15 that violates any provision of this section shall forfeit a penalty as
16 determined by the department. Penalties incurred under this
17 section shall not be included as expenses in connection with the
18 establishment of rates by said company.

1 SECTION 7. Section 75F of Chapter 164 of the General Laws,
2 as so appearing, is hereby amended by striking out in lines 8
3 through 9 the word “hundred” and inserting in place thereof the
4 following new word:— thousand

1 SECTION 8. Section 76 of Chapter 164 of the General Laws,
2 as so appearing, is hereby amended adding at the end thereof the
3 following:—

4 The department shall require gas companies to instruct their
5 authorized permanent employees to annually survey their gas
6 piping system for leak detection. Upon discovery of a natural gas
7 leak, said leak shall be investigated, graded, logged and monitored
8 by authorized permanent employees of the gas company and
9 reported to the department; provided further, that officers and
10 employees of the department shall randomly inspect reported
11 leaks on a regular basis. For said regular inspections the depart-
12 ment shall collect from the gas company such reasonable fees as it
13 may from time to time prescribe. Any gas company which violates
14 any provision of this section shall forfeit a penalty as determined
15 by the department. Penalties and fees incurred under this section
16 shall not be included as expenses in connection with the establish-
17 ment of rates by said company.

1 SECTION 9. Chapter 164 of the General Laws, as so
2 appearing, is hereby further amended by inserting after
3 section 105A the following new section:—

4 Section 105B. Every gas corporation or municipal gas depart-
5 ment engaged in the distribution of gas within the commonwealth
6 shall annually conduct a survey of all schools, student quarters,
7 day care centers, kindergartens, pre-schools, churches, hospitals,
8 elder centers, nursing homes, rehabilitation centers, libraries, fire
9 stations, police stations, theatres, arenas, and all public buildings
10 within their service territories by authorized permanent employees
11 of the gas company. Said survey shall include tests for gas leakage
12 and the visual inspection of all accessible gas facilities and gas
13 appliances in the structure. Any gas company which violates any
14 provision of this section shall forfeit a penalty as determined by
15 the department. Penalties incurred under this section shall not be
16 included as expenses in connection with the establishment of rates
17 by said company.

1 SECTION 10. Section 115A of Chapter 164 of the General
2 Laws, as so appearing, is hereby amended by striking in line 9 the
3 word “five” and inserting thereof the following new word:— fifty

1 SECTION 11. Section 124I of Chapter 164 of the General
2 Laws, as so appearing, is hereby amended by striking out said
3 section 124I in its entirety and inserting in place thereof the
4 following new section:—

5 124I. Each gas company shall upon the termination of service
6 by a customer shut off said service within thirty days after
7 receiving notice of the termination of service by said customer.
8 Said company shall use only authorized permanent employees in
9 complying with this section.

1 SECTION 12. Chapter 164 of the General Laws, as so
2 appearing, is hereby further amended by inserting after
3 section 124I the following new section:—

4 124J. Any company found by the department to have willfully
5 violated sections one hundred and twenty-four A to one hundred
6 and twenty-four I, inclusive, shall be assessed a penalty after a
7 hearing by the department, in an amount not to exceed one thou-
8 sand dollars. Penalties and fees incurred under said sections 124A
9 through 124I shall not be included as expenses in connection with
10 the establishment of rates by said company.

1 SECTION 13. Section 29 of chapter 65 of the Acts of 2004, is
2 hereby amended by striking the in the first sentence the word
3 “except” and inserting in place thereof the following:— including

1 SECTION 14. Section 29 of chapter 65 of the Acts of 2004, is
2 hereby amended by striking the in the third sentence the word
3 “except” and inserting in place thereof the following:— or

1 SECTION 15. Chapter 501 of the Acts of 2002 is hereby
2 amended by adding after the first sentence the following:—
3 Any company found by the department to have willfully vio-
4 lated this section shall be assessed a penalty in an amount not to
5 exceed five hundred dollars for each violation. Penalties and fees
6 incurred under this section shall not be included as expenses in
7 connection with the establishment of rates by said company.

1 SECTION 16. Section 75A of Chapter 164 of the General
2 Laws, as so appearing, is hereby amended by adding at the end
3 thereof the following new paragraph:—
4 *Any new natural gas service shall be initially activated into a*
5 *consumers residence or business only by qualified personnel*
6 *under state and federal regulations.*

1 SECTION 17. Chapter 501 of the Acts of 2002 is hereby
2 amended by adding after the first sentence the following:—
3 *All paving contractors are to utilize a one-call system to allow*
4 *operators to mark out involved gate boxes before paving if they*
5 *have not already been raised prior to a paving project initiation.*
6 *No paving contractor shall, except in an emergency, pave any*
7 *public way unless notifying the "one-call" system and/or the gas*
8 *company(s) in that jurisdiction at least 72 hours, exclusive of Sat-*
9 *urdays, Sundays and legal holidays but not more than 30 days*
10 *before the proposed paving is to be conducted. Such initial notice*
11 *shall set forth a description of the paving location in the manner*
12 *as herein defined. In addition, such initial notice shall indicate the*
13 *paving project in it's entirety.*
14 *The paving contractor can place a paving ring around the valve*
15 *box and the operator can raise the box after the paving. This*
16 *should be required whether the paver plans to cut grade or not.*

1 SECTION 18. Chapter 164 of the General Laws, as so
2 appearing, is hereby further amended by inserting after
3 section 105A the following new section:—

4 *Section 105C. All LNG facilities in the commonwealth will have*
5 *at least one person in the control room at all times while the LNG*
6 *facility is storing LNG.*

1 SECTION 19. Section 76 of Chapter 164 of the General Laws,
2 as so appearing, is hereby amended adding at the end thereof the
3 following:—

4 *Each gas service provided by a gas company or municipal*
5 *lighting plant to a consumer, shall be inspected for corrosion and*
6 *leak surveyed as required by all state and federal regulations by*
7 *the company or municipal lighting plant at the premises of the*
8 *consumer.*

9 *Any gas company or municipal lighting plant which violates*
10 *any provision of this section, unless in the opinion of the depart-*
11 *ment such violation is due to unavoidable cause, accident or lack*
12 *of materials, shall forfeit twenty five dollars for each service*
13 *which is not inspected for corrosion and leak surveyed as pro-*
14 *vided herein. Forfeitures incurred under this section shall not be*
15 *included as expenses in connection with the establishment of rates*
16 *by said companies.*