

**HOUSE . . . . . No. 3339**

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By Mr. Murphy of Burlington, petition of Charles A. Murphy for legislation to promote reliable high quality utility service under the law regulating notices of excavations on public ways. Telecommunications, Utilities and Energy.

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**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, as  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 inserting at the end thereof the following new paragraph:—  
4 The designation markings required by this section shall be per-  
5 formed by trained permanent employees of the utility unless other-  
6 wise authorized by a collective bargaining agreement. If no such  
7 trained permanent employees are available, the department of  
8 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 subdivi-  
11 sion thereof, for any work requiring excavation, an individual shall  
12 provide certification of compliance with this section. Any utility that  
13 violates any provision of this section shall forfeit a penalty as deter-  
14 mined by the department of telecommunications and energy. Penal-  
15 ties incurred under this section shall not be included as expenses in  
16 connection with the establishment of rates by said company.

1 SECTION 2. Section 1C of Chapter 164 of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 striking said section 1C and inserting in place 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 separate  
8 from any generation, transmission, or distribution company affiliate  
9 of the electric or gas company. The department shall promulgate  
10 standards of conduct which shall ensure the separation of such affili-  
11 ates and which shall be consistent with the following provisions: (i)  
12 a distribution or gas company, or an affiliate thereof, shall not  
13 directly or indirectly use proceeds obtained from providing regulated  
14 services, or assets obtained with such proceeds, to subsidize non-  
15 regulated services; said prohibition shall extend to the use of vehi-  
16 cles, service tools, instruments, or employees, and the costs, salaries  
17 and benefits related thereto; (ii) a distribution or gas company shall  
18 not give any affiliates any preference over non-affiliated suppliers or  
19 customers thereof in matters relating to any product or service; (iii)  
20 all products, services, discounts, rebates, and fee waivers offered by  
21 a distribution or gas company shall be available to all customers and  
22 suppliers simultaneously, to the extent technically possible, on a  
23 comparable basis; (iv) a distribution or gas company shall process  
24 all same or similar requests for any product, service, or information  
25 in the same manner and within the same period of time; (v) a distrib-  
26 ution or gas company shall not condition or tie the provision of any  
27 product, service, or rate agreement by the distribution or gas com-  
28 pany to the provision of any product or service to which an affiliate  
29 is involved; (vi) a distribution or gas company shall not share with  
30 any affiliate any market information acquired or developed by the  
31 distribution or gas company in the course of responding to requests  
32 for distribution or gas service or any proprietary customer informa-  
33 tion including, but not limited to, mailing lists, marketing informa-  
34 tion, and other customer related information, without prior written  
35 authorization from the customer and unless the use of such informa-  
36 tion is available to all commercial businesses on a non-discrimina-  
37 tory basis; (vii) a distribution or gas company shall refrain from  
38 presenting that any advantage accrues to customers or others in the  
39 use of its services as a result of that customer or others dealing with  
40 any such affiliate; (viii) a distribution or gas company shall not share  
41 any portion of its name or logo with any affiliate; (ix) a distribution  
42 or gas company shall not engage in joint advertising or marketing  
43 programs with any affiliate; and (x) employees of a distribution or  
44 gas company shall not be shared with, and shall be physically sepa-  
45 rated from those of, any generating or marketing 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 promul-  
50 gated pursuant thereto, the department shall investigate the com-  
51 plaint, and upon the determination that there are reasonable grounds  
52 to proceed, the department shall promptly initiate formal complaint  
53 proceedings. If the department determines that there is no reasonable  
54 basis for initiating a formal complaint proceeding, it shall so advise,  
55 in writing, the person filing such written complaint within 90 days of  
56 the date on which the complaint was filed, if a reasonable basis for  
57 the complaint does exist the person filing the complaint shall be  
58 notified within 90 days.

59 The department shall establish such penalties as necessary to  
60 assure compliance; provided, however, that any penalty incurred  
61 under this section shall not be included as expenses in connection  
62 with the establishment of rates by said distribution or gas company.  
63 Any final judgment or determination issued by the department, as a  
64 result of an investigation or otherwise, that an electric or gas com-  
65 pany or an affiliate thereof has violated either (1) the provisions of  
66 this section; or (2) any rule, order, or settlement promulgated pur-  
67 suant thereto, shall be prima facie evidence in any civil action  
68 against the distribution or gas company or its affiliate to recover  
69 damages or obtain injunctive relief.

70 A violation of this section shall constitute an unfair or deceptive  
71 act or practice under the provisions of chapter 93A, notwithstanding  
72 any contrary provision of any other law of the commonwealth or any  
73 exemption provided by said chapter 93A.

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