

**HOUSE . . . . . No. 3388**

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By Mr. Walsh of Boston, petition of Martin J. Walsh and Eugene L. O’Flaherty relative to utility service in the commonwealth. Telecommunications, Utilities and Energy.

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**The Commonwealth of Massachusetts**

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In the Year Two Thousand and Seven.  
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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:—

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 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 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, and employees, and the costs,  
17 salaries and benefits related thereto; (ii) a distribution or gas com-  
18 pany shall not give any affiliates any preference over non-affiliated  
19 suppliers or customers thereof in matters relating to any product or  
20 service; (iii) all products, services, discounts, rebates, and fee  
21 waivers offered by a distribution or gas company shall be available  
22 to all customers and suppliers simultaneously, to the extent techni-  
23 cally possible, on a comparable basis; (iv) a distribution or gas com-  
24 pany shall process all same or similar requests for any product,  
25 service, or information in the same manner and within the same  
26 period of time; (v) a distribution or gas company shall not condition  
27 the provision of any product, service, or rate agreement by the distri-  
28 bution or gas company to the provision of any product or service to  
29 which an affiliate is involved; (vi) a distribution or gas company  
30 shall not share with any affiliate any market information acquired or  
31 developed by the distribution or gas company in the course of  
32 responding to requests for distribution or gas service or any propri-  
33 etary customer information including, but not limited to, mailing  
34 lists, marketing information, and other customer related information,  
35 unless the use of such information is available to all commercial  
36 businesses on a non-discriminatory basis; (vii) a distribution or gas  
37 company shall refrain from presenting that any advantage accrues to  
38 customers or others in the use of its services as a result of that cus-  
39 tomer or others dealing with any such affiliate; (viii) a distribution or  
40 gas company shall not engage in joint advertising or marketing pro-  
41 grams with any affiliate; and (ix) employees of a distribution or gas  
42 company shall not be shared with, and shall be physically separated  
43 from those of, any generating or marketing affiliate.

44 Upon the filing of a written complaint with the department  
45 requesting determination of compliance by a distribution or gas

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

65 A violation of this section shall constitute an unfair or deceptive  
66 act or practice under the provisions of chapter 93A, notwithstanding  
67 any contrary provision of any other law of the commonwealth or any  
68 exemption provided by said chapter 93A.

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

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

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

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

1 SECTION 5. Section 1F(7) of Chapter 164 of the General Laws,  
2 as so appearing, is hereby amended by adding after the phrase  
3 “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 reliability  
6 do not decline below levels that existed on November 1, 1997.

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

4 “Upon installation of a meter measuring gas supplied to any  
5 premises, only the authorized permanent employees of the gas com-  
6 pany completing said installation shall be authorized to turn on the  
7 gas supply; provided further, that the newly installed meter shall  
8 remain locked on the service side by the gas company until the local  
9 gas inspector inspects the installation of piping to the new gas appli-  
10 ance(s). Upon the successful completion of the inspection, the lock

11 shall only be removed by an authorized permanent employee of the  
12 gas company; provided further, that said permanent employee of the  
13 gas company shall then light all gas appliances and check all gas  
14 related equipment. Any gas company that violates any provision of  
15 this section shall forfeit a penalty as determined by the department.  
16 Penalties incurred under this section shall not be included as  
17 expenses in connection with the establishment of rates by said com-  
18 pany.

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

1 SECTION 8. Section 76 of Chapter 164 of the General Laws, as  
2 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 piping  
6 system for leak detection. Upon discovery of a natural gas leak, said  
7 leak shall be investigated, graded, logged and monitored by autho-  
8 rized permanent employees of the gas company and reported to the  
9 department; provided further, that officers and employees of the  
10 department shall randomly inspect reported leaks on a regular basis.  
11 For said regular inspections the department shall collect from the gas  
12 company such reasonable fees as it may from time to time prescribe.  
13 Any gas company which violates any provision of this section shall  
14 forfeit a penalty as determined by the department. Penalties and fees  
15 incurred under this section shall not be included as expenses in con-  
16 nection with the establishment of rates by said company.

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

4 Section 105B. Every gas corporation or municipal gas department  
5 engaged in the distribution of gas within the commonwealth shall  
6 annually conduct a survey of all schools, student quarters, day care  
7 centers, kindergartens, pre-schools, churches, hospitals, elder cen-  
8 ters, nursing homes, rehabilitation centers, libraries, fire stations,

9 police stations, theatres, arenas, and all public buildings within their  
10 service territories by authorized permanent employees of the gas  
11 company. Said survey shall include tests for gas leakage and the  
12 visual inspection of all accessible gas facilities and gas appliances in  
13 the structure. Any gas company which violates any provision of this  
14 section shall forfeit a penalty as determined by the department.  
15 Penalties incurred under this section shall not be included as  
16 expenses in connection with the establishment of rates by said com-  
17 pany.

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

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

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

1 SECTION 12. Chapter 164 of the General Laws, as so appearing,  
2 is hereby further amended by inserting after section 124I the  
3 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 and  
6 twenty-four I, inclusive, shall be assessed a penalty after a hearing  
7 by the department, in an amount not to exceed one thousand dollars.  
8 Penalties and fees incurred under said sections 124A through 124I  
9 shall not be included as expenses in connection with the establish-  
10 ment 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 violated  
4 this section shall be assessed a penalty in an amount not to exceed  
5 five hundred dollars for each violation. Penalties and fees incurred  
6 under this section shall not be included as expenses in connection  
7 with the establishment of rates by said company.

1 SECTION 16. Section 75A of Chapter 164 of the General Laws,  
2 as so appearing , is hereby amended by adding at the end thereof the  
3 following new paragraph:—

4 Any new natural gas service shall be initially activated into a con-  
5 sumer’s residence or business only by qualified personnel under  
6 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 have  
5 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 Satur-  
9 days, Sundays and legal holidays but not more than 30 days before  
10 the proposed paving is to be conducted. Such initial notice shall set  
11 forth a description of the paving location in the manner as herein  
12 defined. In addition, such initial notice shall indicate the paving pro-  
13 ject in its entirety.

14 The paving contractor can place a paving ring around the value  
15 box and the operator can raise the box after the paving. This should  
16 be required whether the paver plans to cut grade or not.

1 SECTION 18. Chapter 164 of the General Laws, as so appearing,  
2 is hereby further amended by inserting after section 105A the  
3 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, as  
2 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 leak  
6 surveyed as required by all state and federal regulations by the com-  
7 pany or municipal lighting plant at the premises of the consumer.

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