

SENATE NO. 792



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 Official
2 Edition, is hereby amended by striking out section 5(j) in its entirety and inserting the following
3 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,

11 pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling
12 stock or aircraft 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,
16 authority’s or public utility company’s employee or agent, caused or otherwise
17 contributed to the release or threat of release or caused the release or threat of release to
18 become worse than it otherwise would have been;

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

22 (5) it provided reasonable access, including moving utilities or disrupting service, to the site
23 or vessel to employees, agents and contractors of the department to conduct response
24 actions, and to 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
26 agency, authority or public utility company conducted such response action or portion of
27 a response action in compliance with the requirements of this chapter and the
28 Massachusetts Contingency Plan; and

29 (7) it did not know or have reason to know of the presence of oil or hazardous material on
30 the 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
34 municipal light departments organized under chapter one hundred and sixty-four or any other
35 special law, and Massachusetts gas and electric companies made subject to the jurisdiction of
36 the department of telecommunications and energy by any provision of law except chapter one
37 hundred and ten A of the General Laws and chapter six hundred and fifty-one of the acts of
38 nineteen hundred and ten, as amended or the “Massachusetts Bay Transportation Authority”
39 pursuant to chapter one hundred and sixty one A, section forty one, as amended.