

# SENATE NO. 1992

## **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.

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

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

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

15 Section 1C. Any marketing company or other competitive or unregulated operation or entity of an  
16 electric or gas company shall be in the form of an affiliate of said company and shall be separate from  
17 any generation, transmission, or distribution company affiliate of the electric or gas company. The  
18 department shall promulgate standards of conduct which shall ensure the separation of such affiliates  
19 and which shall be consistent with the following provisions: (i) a distribution or gas company, or an  
20 affiliate thereof, shall not directly or indirectly use proceeds obtained from providing regulated  
21 services, or assets obtained with such proceeds, to subsidize non-regulated services; said prohibition  
22 shall extend to the use of vehicles, service tools, instruments, and employees, and the costs, salaries  
23 and benefits related thereto; (ii) a distribution or gas company shall not give any affiliates any  
24 preference over non-affiliated suppliers or customers thereof in matters relating to any product or  
25 service; (iii) all products, services, discounts, rebates, and fee waivers offered by a distribution or gas  
26 company shall be available to all customers and suppliers simultaneously, to the extent technically  
27 possible, on a comparable basis; (iv) a distribution or gas company shall process all same or similar  
28 requests for any product, service, or information in the same manner and within the same period of  
29 time; (v) a distribution or gas company shall not condition or tie the provision of any product, service,  
30 or rate agreement by the distribution or gas company to the provision of any product or service to  
31 which an affiliate is involved; (vi) a distribution or gas company shall not share with any affiliate any  
32 market information acquired or developed by the distribution or gas company in the course of  
33 responding to requests for distribution or gas service or any proprietary customer information  
34 including, but not limited to, mailing lists, marketing information, and other customer related  
35 information, unless the use of such information is available to all commercial businesses on a non-  
36 discriminatory basis; (vii) a distribution or gas company shall refrain from presenting that any  
37 advantage accrues to customers or others in the use of its services as a result of that customer or others

38 dealing with any such affiliate; (viii) a distribution or gas company shall not engage in joint  
39 advertising or marketing programs with any affiliate; and (ix) employees of a distribution or gas  
40 company shall not be shared with, and shall be physically separated from those of, any generating or  
41 marketing affiliate.

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

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

59 It shall be the duty of the Attorney General of the Commonwealth to institute proceedings in the  
60 Superior Court to prevent and restrain violations of this section. When the Attorney General has reason  
61 to believe an electric or gas company or its affiliate is engaging in a violation of this section, the  
62 Attorney General may bring an action to enjoin the electric or gas company, the affiliate, or both, from  
63 engaging in a violation of this section.

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

67 November 1, 1997

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

70 At the time of any filings made pursuant to this section, if staffing levels have decreased below those  
71 in effect on November 1, 1997, the department shall hold evidentiary hearings to determine if staffing  
72 levels in said company are adequate; provided further, that unless the company establishes, by clear  
73 and convincing evidence, that said staffing levels are adequate, the department shall hold that staffing  
74 levels within any function, department, or work unit, below those in existence on November 1, 1997  
75 are unsafe and therefore not in compliance with this section. The results of the hearings shall be  
76 binding on both parties and the civil penalty for non-compliance shall be no less than \$10,000.00 per  
77 day; provided, however, that the maximum civil penalty shall not exceed \$500,000 for any related  
78 series of violations. Nothing in this paragraph shall prevent reduction of forces below the November 1,  
79 1997 level through early retirement and severances negotiated with labor organizations before said

80 date. The preceding provisions of this paragraph notwithstanding, in no event shall the department fail  
81 to establish benchmarks for employee staffing levels for each distribution, transmission and gas  
82 company by September 1, 2005, regardless of whether any company has at any time used,  
83 implemented or discontinued the use of any set of performance based rates.

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

86 and, in accordance with Section 1E, shall establish benchmark staffing levels adequate to ensure that  
87 service quality and reliability do not decline below levels that existed on November 1, 1997.

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

90 “Upon installation of a meter measuring gas supplied to any premises, only the authorized permanent  
91 employees of the gas company completing said installation shall be authorized to turn on the gas  
92 supply; provided further, that the newly installed meter shall remain locked on the service side by the  
93 gas company until the local gas inspector inspects the installation of piping to the new gas  
94 appliance(s). Upon the successful completion of the inspection, the lock shall only be removed by an  
95 authorized permanent employee of the gas company; provided further, that said permanent employee  
96 of the gas company shall then light all gas appliances and check all gas related equipment. Any gas  
97 company that violates any provision of this section shall forfeit a penalty as determined by the  
98 department. Penalties incurred under this section shall not be included as expenses in connection with  
99 the establishment of rates by said company.

100 SECTION 7. Section 75F of Chapter 164 of the General Laws, as so appearing, is hereby amended by  
101 striking out in lines 8 through 9 the word hundred and inserting in place thereof the following new  
102 word:- thousand

103 SECTION 8. Section 76 of Chapter 164 of the General Laws, as so appearing, is hereby amended  
104 adding at the end thereof the following:-

105 The department shall require gas companies to instruct their authorized permanent employees to  
106 annually survey their gas piping system for leak detection. Upon discovery of a natural gas leak, said  
107 leak shall be investigated, graded, logged and monitored by authorized permanent employees of the  
108 gas company and reported to the department; provided, further, that officers and employees of the  
109 department shall randomly inspect reported leaks on a regular basis. For said regular inspections the  
110 department shall collect from the gas company such reasonable fees as it may from time to time  
111 prescribe. Any gas company which violates any provision of this section shall forfeit a penalty as  
112 determined by the department. Penalties and fees incurred under this section shall not be included as  
113 expenses in connection with the establishment of rates by said company.

114 SECTION 9. Chapter 164 of the General Laws, as so appearing, is hereby further amended by  
115 inserting after section 105A the following new section:-

116 Section 105B. Every gas corporation or municipal gas department engaged in the distribution of gas  
117 within the commonwealth shall annually conduct a survey of all schools, student quarters, day care  
118 centers, kindergartens, pre-schools, churches, hospitals, elder centers, nursing homes, rehabilitation  
119 centers, libraries, fire stations, police stations, theatres, arenas, and all public buildings within their  
120 service territories by authorized permanent employees of the gas company. Said survey shall include

121 tests for gas leakage and the visual inspection of all accessible gas facilities and gas appliances in the  
122 structure. Any gas company which violates any provision of this section shall forfeit a penalty as  
123 determined by the department. Penalties incurred under this section shall not be included as expenses  
124 in connection with the establishment of rates by said company.

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

127 SECTION 11. Section 124I of Chapter 164 of the General Laws, as so appearing, is hereby amended  
128 by striking out said section 124I in its entirety and inserting in place thereof the following new  
129 section:-

130 124I. Each gas company shall upon the termination of service by a customer shut off said service  
131 within thirty days after receiving notice of the termination of service by said customer. Said company  
132 shall use only authorized permanent employees in complying with this section.

133 SECTION 12. Chapter 164 of the General Laws, as so appearing, is hereby further amended by  
134 inserting after section 124I the following new section:-

135 124J. Any company found by the department to have willfully violated sections one hundred and  
136 twenty-four A to one hundred and twenty-four I, inclusive, shall be assessed a penalty after a hearing  
137 by the department, in an amount not to exceed one thousand dollars. Penalties and fees incurred under  
138 said sections 124A through 124I shall not be included as expenses in connection with the  
139 establishment of rates by said company.

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

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

144 SECTION 15. Chapter 501 of the Acts of 2002 is hereby amended by adding after the first sentence  
145 the following:-

146 Any company found by the department to have willfully violated this section shall be assessed a  
147 penalty in an amount not to exceed five hundred dollars for each violation. Penalties and fees incurred  
148 under this section shall not be included as expenses in connection with the establishment of rates by  
149 said company.