

SENATE NO. 2024

AN ACT RELATIVE TO THE DEPARTMENT OF HIGHWAYS

*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. Chapter 16 of the General Laws, as appearing in the 1999 Official Edition, is
2 hereby amended by inserting after section 5 the following two sections:

3 SECTION 6. (a) The department of highways may provide functional replacement of real
4 property in public ownership whenever the department has acquired such property in whole or
5 in part under the provisions of this act or such property is significantly and adversely affected as
6 a result of the acquisition of property for a highway or highway-related project and whenever
7 the department determines such functional replacement is necessary and in the public interest.
8 For purposes of this section, the words "functional replacement" shall mean the replacement,
9 pursuant to the provisions of chapter 7 of the General Laws including sections 40F and 40F>,
10 requiring authorization of the general court prior to disposition of real property, including either
11 land or facilities thereon, or both, which will provide equivalent utility, and the words "real
12 property in public ownership" shall mean any and all present and future interest in land,
13 including rights of use, now existing or hereafter arising, held by an agency, authority, board,
14 bureau, commission, department, division or other unit, body, instrumentality or political

15 subdivision of the commonwealth. This section shall not constitute authorization by the general
16 court as required by said chapter 7.

17 (b) Whenever the department determines it is necessary that any utility or utility facility, as
18 defined under federal law, be relocated because of construction of a project which is to be
19 reimbursed federally in whole or in part, then such facility shall be relocated by the department
20 or by the owner thereof in accordance with an order from the department; provided, however,
21 that the commonwealth shall reimburse the owner of such utility or utility facility for the cost of
22 relocation subject to the limitations in paragraph (f) and in accordance with the following
23 formula: (1) for any utility facility, as defined under federal law, which is to be reimbursed
24 federally in whole or in part, the department shall reimburse the utility to the extent that the cost
25 of relocating the utility facility is reimbursed by the federal government; (2) for the relocation of
26 any utility facility over \$50,000 that does not qualify for federal reimbursement, the department
27 shall reimburse the utility in accordance with the utility's performance in meeting the following
28 schedule: (i) if the utility completes the relocation in a manner consistent with the department's
29 policies and on or before the target date established by the department for the project, the
30 department shall reimburse the utility at least 50 per cent and not more than 80 per cent of the
31 costs of relocating the utility facility;

32 (c) the department shall promulgate policies for the calculation of reimbursable expenditures,
33 determination of target dates and requirements for notice to utilities, extent of consultation with
34 utilities regarding design criteria for a relocation, calculation of completion times, and to
35 implement the provisions of this section. The department shall consult with the utilities,
36 construction industry representatives, labor representatives, consumer representatives and other
37 relevant and appropriate parties in the development of such policies, and shall forward such

38 policies to the chairs of the house and senate committees on ways and means, the joint
39 committee on transportation and the joint committee on government regulations.

40 (d) Any relocation of facilities carried out under this section which is not performed by
41 employees of the owner shall be subject to the provisions of section 27 of chapter 149 of the
42 General Laws.

43 (e) Notwithstanding the provisions of any general or special law to the contrary, any utility
44 facility that is required to be relocated because of the construction of a project federally funded
45 under the Federal-Aid Highway Act of 1982 and the Federal-Aid Highway Act of 1987 may be
46 relocated temporarily above ground during the construction of said project.

47 (f) The total cost to the commonwealth for reimbursements for utility relocations under this
48 section that are not reimbursed federally in whole or in part, shall not exceed \$10 million
49 annually, and shall not be credited toward meeting the requirements of a four hundred million
50 dollar annual statewide road and bridge program as defined in chapter 291 of the acts of 2004.

51 SECTION 7 (a) Notwithstanding the provisions of section 6 of chapter 33 of the acts of 1991 or
52 any other general or special law to the contrary, the commonwealth, through the department of
53 highways, may reimburse the owner of an underground utility or utility facility as defined under
54 federal law whenever such underground utility or utility facility has been relocated because of
55 construction of a project which is to be reimbursed federally in whole or in part. The provisions
56 of this section shall apply to an underground utility or utility location project eligible for federal
57 reimbursement having commenced on or after January 1, 1984, and the reimbursement
58 authorized herein shall be to the extent that that the cost of relocating the facility is reimbursed
59 by the federal government.

60 (b) Notwithstanding paragraph (a), the department of highways shall, in consultation with utility
61 representatives, construction industry representatives, labor representatives, consumer
62 representatives and other interested and appropriate parties, formulate recommendations for the
63 general court on the feasibility of reimbursement for underground utility relocation projects that
64 are not eligible for federal reimbursement on construction projects that are to be reimbursed
65 federally in whole or in part. Such recommendations shall be forwarded to the chairs of the
66 house and senate committees on ways and means, the joint committee on transportation and the
67 joint committee on government regulations on or before December 31, 2007

68