

HOUSE No. 02634

The Commonwealth of Massachusetts

PRESENTED BY:

Geraldine Creedon

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to roadway re-openings and safety..

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Geraldine Creedon

11th Plymouth

Christine E. Canavan

10th Plymouth

HOUSE No. 02634

By Ms. Creedon of Brockton, a petition (accompanied by bill, House, No. 2634) of Canavan and Creedon relative to roadway reopenings and safety Joint Committee on Transportation.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 3189 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to roadway re-openings and safety..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 The General Laws are hereby amended by inserting after chapter 84 the following chapter:
- 2 Chapter 84A
- 3 Roadway Re-openings Safety
- 4 SECTION 1. The department of highway shall conduct construction activities and ensure
- 5 development of project plans for state roads and bridges in coordination with municipal agencies
- 6 to achieve the following:-
- 7 Ensure the development of project plans and construction timelines.

8 Communicate with all project participants, including investor owned utilities, to ensure that all
9 are aware of project timelines and will perform their respective functions within the prescribed
10 time frame.

11 Develop a form that presents road closing and detour related information to include, but not be
12 limited to, traffic volumes re-routed and detour length to determine incremental mileage, fuel
13 consumed and green house gas emissions resulting from delayed road openings.

14 In the event of a delayed road re-opening and that a completed copy of the form detailed above is
15 provided to the applicable regulatory authority.

16 Advise the applicable regulatory authority at the end of each delayed roadway re-opening and
17 provide that regulatory authority with a completed form detailing the cumulative impacts
18 resulting from that project delay.

19 Coordinate with the State Police to cite for non-relocated public utility assets that pose a safety
20 hazard in state roadways at the end of road construction projects citations shall be sent to the
21 utility and a copy to the appropriate agency. Assist local agencies in developing a project
22 timeline and completion of the above form for road closings within their jurisdiction. In the
23 event of a delayed road re-opening in a local jurisdiction, provide a complete property of the
24 form to the appropriate regulatory authority. At the end of a delayed road re-opening in a local
25 jurisdiction, provide the regulatory authority with a completed form detailing the cumulative
26 impacts resulting from the project delay.

27 SECTION 2. Municipal Public Works' Departments shall have the responsibility to ensure roads
28 within their jurisdiction are operable and in safe conditions. Such departments shall be
29 responsible for, but not limited to, the following:-

30 Ensure the development of project plans and construction timelines.

31 Assist the department of highways to complete their form for each road closure within its

32 jurisdiction as part of the initial project planning process.

33 Communicate with all project participants, including public utilities, to ensure that all are aware

34 of the project timelines and will perform their respective functions within the prescribed time

35 frame.

36 In the event of a delayed road re-opening due to a public utility, provide information on each

37 such delayed road re-opening to the department of highways.

38 Advise the department of highways of the end of each delayed road re-opening.

39 Coordinate with local police to cite for non-relocated public utility assets that pose a safety

40 hazard in municipally operated roadways at the end of road construction projects. Municipal

41 citations will be sent to the attention of the traffic coordinator for that utility and a copy to the

42 concerned regulatory authority.

43 The department of public works may contact the utility for assistance in resolving right-of-way

44 issues with the utility. If the right-of-way issue is not resolved within 30 days from the date of

45 notice, the department of public works or such other municipal agency with responsibility over

46 the issue, may contact the appropriate regulatory authority for assistance in resolving the issue.

47 SECTION 3. The department of public utilities shall perform the following functions:-

48 Ensure that all investor owned public utilities always maintain designated traffic coordinators

49 and contact information, including a full address, phone, fax, and email address. This database

50 shall be readily available on the DPU website and shall be maintained at minimum, monthly.

51 Shall review the job/position description of the traffic coordinators submitted by each investor
52 owned utility and ensure that it complies with the intent of this law and shall advise each utility
53 of any discrepancies in the content of the job/position.

54 Shall maintain a file of current job/position descriptions for the traffic coordinator for each
55 investor owned public utility.

56 Reasonable and just expenses associated with establishment and operation of a utility traffic
57 coordinator position within each utility shall be allowable for ratemaking purposes.

58 Maintain information files on all delays in public roadway openings and public roadway safety
59 related issues and accumulate those files for each investor owned utility from the time of
60 enactment of this law through the completion of the next rate case for that utility. Subsequently,
61 a traffic file will be maintained for each investor owned public utility during the time interval
62 between rate cases for each such utility.

63 The commissioner of the DPU shall review and consider the traffic related delays and safety
64 violations will be considered to be a positive factor in rate making determination for that utility.

65 Shall ensure that no municipal public roadway safety related fines or other such civil penalties
66 are not passed onto the ratepayers of that utility, but shall be for the account of the share holders
67 of that utility. Municipal public roadway safety related fines or other such civil penalties
68 incorrectly included in rate base shall be removed and the utility earnings reduced by no more
69 than 10 times the amount improperly accounted for.

70 Shall prepare an annual report on all utility related delays on roadway re-openings and roadway
71 safety issues. This report shall also include information on incremental distances driven, fuel

72 consumed, and greenhouse gas emissions due to delayed roadway re-openings for each utility.
73 The report should be prepared annually for each calendar year and presented to the
74 undersecretary of energy within the Executive Office of Energy and Environmental Affairs
75 (EOEEA) not later than the end of the first calendar quarter.

76 SECTION 4. The department of telecommunications and cable shall perform the following
77 functions:

78 Ensure that all investor owned public utilities always maintain a designated traffic coordinator.

79 Maintain an up-to-date database of all public utility traffic coordinators and contact information,
80 including a full address, phone, fax, and email address. This data base shall be readily available
81 on the DTC website and shall be maintained at minimum, monthly.

82 The DTC shall review the job/position description of the traffic coordinators submitted by each
83 investor owned utility and ensure that it complies with the intent of this law and shall advise each
84 utility of discrepancies in the content of the job/position description.

85 The DTC shall maintain a file of current job/position descriptions for the traffic coordinator for
86 each investor owned public utility.

87 Reasonable and just expenses associated with the establishment and operation of a utility traffic
88 coordinator position within each utility shall be allowable for ratemaking purposes.

89 Maintain information filed on all delays in public roadway openings and public roadway safety
90 related issues and accumulate those files for each investor owned utility from the time of
91 enactment of this law through the completion of the next rate case for that utility. Subsequently,

92 a traffic file will be maintained for each investor owned public utility during the time interval
93 between rate cases for each such utility.

94 The commissioners of the DTC shall review and consider the traffic related delays and safety
95 issues in each such utilities rate making case. The absence of or infrequent reopening delays and
96 traffic safety violations will be considered a positive factor in rate making determination for that
97 utility.

98 The DTC shall ensure that no municipal public roadway safety related fines or other such civil
99 penalties are not passed on to the ratepayers of that utility, but shall be for the account of the
100 shareholders of that utility. Municipal public roadway safety related fines or other such civil
101 penalties incorrectly included in rate base shall be removed and the utility earnings reduced by
102 no more than 10 times the amount improperly accounted for.

103 The DTC shall prepare an annual report on all utility related delays on roadway re-openings and
104 roadway safety issues. This report shall also include information on incremental distances
105 driven, fuel consumed, and greenhouse gas emissions due to delayed roadway re-openings for
106 each utility. The report should be prepared annually for each calendar year and presented to the
107 undersecretary the office of consumer affairs and business regulation not latter than the end of
108 the first calendar quarter.

109 SECTION 5. Public utilities shall have the following responsibilities.

110 They shall appoint a traffic coordinator and provide the full contact information, including a full
111 address, phone, fax, and email address to the responsible regulatory authority within the
112 commonwealth. If the traffic coordinator is replaced, the utility shall ensure that the contact
113 information is fully updated at the time of the personnel change.

114 The traffic coordinator shall be the designated representative, who will be responsible within that
115 utility to perform these and other functions such as, but not limited to, the following:

116 Maintain the schedules and information on each road project that may require the relocation,
117 removal or replacement or other action on the part of the utility to permit the timely and safe re-
118 opening of public roadways. Travel to roadway work sites or to other locations to meet with the
119 department of highways and local departments of public works as required to effectively
120 understand and coordinate roadway projects.

121 Coordinate the assignment of utility workers to work on utility assets to ensure the timely
122 reopening and/or safe operation of public roadways in line with each road construction time
123 table.

124 The event that utility assets are preventing a roadway reopening and/or posing a roadway safety
125 hazard and are cited and fees or civil penalties assessed, the traffic coordinator shall be delegated
126 the authority to effect payment of such penalty to the proper authority assessing such penalty. In
127 the event of delays in paying civil penalties, the traffic coordinator shall have the delegated the
128 authority and assigned responsibility to effect payment for late payment penalties.

129 The traffic coordinator shall assist local departments of public works to resolve right-of-way
130 issues in a timely manner.

131 The traffic coordinator shall ensure that no civil penalties or late payment fees are included as
132 reimbursable expenses to the ratepayers of that utility and shall ensure that such fees and
133 penalties are for the account of the shareholders.

134 The traffic coordinator shall report to a senior officer of the utility who is responsible for utility
135 operations.

136 The job/position description for the traffic coordinator shall be prepared and a copy shall be sent
137 to the applicable commonwealth regulatory authority, which shall review each job description to
138 ensure that each job/position description corresponds with the intent and provisions of this law.

139 The utility will consider comments from the regulatory authority and modify the job/position
140 description accordingly and provide a revised job/position for the regulatory body to maintain on
141 file.

142 Just and reasonable expenses associated with the position and function of the traffic coordinator
143 shall be allowable expenses and recoverable from ratepayer revenue.

144 SECTION 6. Cities and towns shall have the authority to perform the following functions and
145 they may cite a public utility with a roadway safety violation if they have public utility assets in
146 an open public roadway. Safety fines shall be limited to \$100 per utility asset per day. They
147 may cite a public utility with roadway safety violations if utility assets in a roadway prevent it
148 from being re-opened at the completion of a roadway construction project, and such fines shall
149 be limited to \$250 per utility asset per day city and town citations shall be prepared in the name
150 of the utility and sent to the attention of the traffic coordinator.

151 If the utility has been notified of roadway construction plans and elects not to relocate utility
152 assets within the roadway construction timeframe, this law shall hold the utility responsible for
153 their decision not to relocate utility assets.

154 If the utility appeals any safety violation fines and the fines are upheld in court, the utility shall
155 compensate that municipality for legal fees charged to represent that municipality, fully weighted

156 salary and benefit costs of the municipal authorities to prepare the appeal and attend the appeal
157 and travel expense to and from the court appeal. A statement of total costs incurred shall be
158 prepared by that municipality and sent to the traffic coordinator for the concerned utility for
159 reimbursement.

160 Late payment of municipal fines or reimbursement of appeal costs shall bear a late payment fee
161 if not paid within thirty days from the date sent. Unpaid amounts shall bear a late payment rate
162 no greater than the fee charged to municipal residents for the late payment of real estate taxes.
163 Late payment fees shall bear the late payment fee rate from the time the notice is sent until the
164 date the total payment due is received.