

**HOUSE . . . . . No. 1963**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**James Arciero**

*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 facilitating the formation of Statewide Mutual Aid Agreements for Public Work Agencies.

PETITION OF:

NAME:

James Arciero

DISTRICT/ADDRESS:

2nd Middlesex

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT FACILITATING THE FORMATION OF STATEWIDE MUTUAL AID AGREEMENTS FOR PUBLIC WORK AGENCIES.

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

- 1 Chapter 40 of the General Laws is hereby amended by inserting  
2 the following new section:—  
3 Chapter 40, Section 4J. The Statewide Municipal Mutual  
4 Assistance Program  
5 (a)(i) “The statewide municipal mutual assistance agreement  
6 for public works” is defined as a comprehensive statewide agreement  
7 entered into by participating governmental units for the  
8 facilitation and provision of sharing of public works resources  
9 across jurisdictional lines in the case of public works incidents  
10 that require assistance from one or more additional municipalities.  
11 (ii) “Governmental unit” is defined as a city, town, county, district  
12 as defined in Section 1A, however constituted, water or  
13 sewer commission established under the provisions of  
14 chapter 40N or pursuant to a special law, fire district, or other  
15 political entity of the Commonwealth or its municipalities.  
16 (b) There shall be a statewide mutual assistance agreement

17 developed for Public Works activities, by the Statewide Municipal  
18 Mutual Assistance Advisory Committee within 90 days of the  
19 enactment of this statute, that covers public works services, personnel,  
20 equipment, supplies and facilities to prepare for, prevent,  
21 mitigate, respond to and recover from incidents that require assistance  
22 from additional municipalities, consistent with the provisions  
23 herein. Nothing in this section shall establish or apply to  
24 mutual aid agreements among local public safety agencies. All  
25 351 municipalities of the Commonwealth shall be automatically  
26 enrolled in the statewide municipal mutual assistance agreement,  
27 however, to continue participation in the program, the chief executive  
28 officer of a city or town, or as otherwise specified by statute  
29 or charter must sign the mutual assistance agreement within 180  
30 days of the enactment of the legislation. If a community does not  
31 execute the agreement it is assumed that the community will not  
32 be a participant. Participation shall exist for a period of ten years.  
33 Other governmental units not under the direction and control of a  
34 commonwealth municipality shall be authorized to sign on to the  
35 statewide mutual aid agreement on a form filed with and prescribed  
36 by the Statewide Municipal Mutual Assistance Advisory  
37 Committee. In addition, governmental units from a municipality  
38 directly adjacent to a commonwealth municipality, but in another  
39 state, shall be able to sign on to the statewide mutual aid agreement,  
40 if duly authorized, on a form prescribed by the Statewide  
41 Municipal Mutual Assistance Advisory Committee.  
42 (c) There will be an annual open enrollment period for those

43 communities who are not part of the Statewide Municipal Mutual  
44 Assistance Program. The date of the open enrollment period and  
45 any other requirements will be established by the Statewide  
46 Municipal Mutual Assistance Advisory Committee. In addition, a  
47 community may opt out of the program at any time by informing  
48 the Statewide Mutual Assistance Advisory Committee, in writing,  
49 of its intent to terminate participation in the program. This  
50 request for removal from the program shall be executed by the  
51 chief executive officer of al city or town, or as otherwise specified  
52 by statute or charter.

53 (d) There shall be a Statewide Municipal Mutual Assistance  
54 Advisory Committee that shall consist of one appointee made by  
55 the following parties: the Massachusetts Highway Association, the  
56 New England Chapter of the American Public Works Association  
57 (Massachusetts Representative), the New England Water Environment  
58 Association (Massachusetts Representative), New England  
59 Water Works Association (Massachusetts Representative), the  
60 Massachusetts Tree Wardens Association and the Massachusetts  
61 Municipal Association. One appointee from the Executive Office  
62 of Public Safety and one member from each of the state's  
63 Regional Planning Agencies shall serve as Ex-officio members.

64 (e) The Statewide Municipal Mutual Assistance Advisory Committee  
65 shall develop procedural plans, protocols and programs for  
66 intrastate cooperation to be used by public works agencies in  
67 response to an incident.

68 (f) Each participating governmental unit shall identify no less

69 than one, but no more than three points of contact within its public  
70 works agency, and shall provide for contacts consistent with the  
71 governmental unit's so-called continuation of operation/continuation  
72 of governance plan.

73 (g) A participating governmental unit may request the assistance  
74 of one or more participating governmental units to:

75 (1) Manage public works incident response or recovery if they  
76 do not possess the ability to do so effectively, independently; or

77 (2) Conduct public works incident response or recovery related  
78 exercises, testing or training.

79 (h) A request for assistance to a participating governmental unit  
80 shall be made by and to: the chief executive officer of a city or  
81 town, or as otherwise specified by statute or charter, or one of  
82 three designated points of contact. An oral request shall be allowable  
83 but must be followed in writing no later than twenty-four  
84 hours after the oral request is made.

85 The request must include the following information:

86 (1) A description of the public works incident response and  
87 recovery functions for which assistance is needed.

88 (2) The amount and type of public works services, equipment,  
89 supplies, materials, personnel, and other resources requested and a  
90 point of contact at the location.

91 (3) The place and time where assistance is needed and where  
92 the point of contact will be.

93 (i) The responding governmental unit shall not be required to  
94 respond to a request and may choose to do so only if responding

95 would not jeopardize the participating municipality's own reasonable  
96 protection.

97 (j) The dispatch of public works resources under the statewide  
98 mutual assistance agreement shall operate under the direction of  
99 their parent agency. Tactical operational control of resources shall  
100 be under the direction and control of the requesting jurisdiction.

101 The administration and coordination of the statewide mutual aid  
102 agreement shall be the responsibility of the Statewide Municipal  
103 Mutual Assistance Advisory Committee.

104 (k) Reimbursement for any and all public works services performed  
105 under the statewide municipal mutual assistance agreement  
106 is presumed, but may be waived in writing by a participating  
107 municipality prior or subsequent to responding to an incident  
108 through a supplemental agreement. This section shall not provide  
109 for reimbursement of any kind outside of what is agreed to by the  
110 individual governmental units.

111 (l) Notwithstanding section 4A of chapter 40 of the general  
112 laws, the chief executive officer of a city or town, or as otherwise  
113 specified by statute or charter, is hereby authorized to enter into  
114 supplemental agreements on behalf of such unit with other governmental  
115 units to further define the rights and responsibilities of  
116 each party for the provision of mutual aid pursuant to the  
117 statewide municipal mutual assistance agreement established  
118 herein.

119 (m) While in transit to, returning from, and during a mutual  
120 assistance response for another governmental unit, a participating

121 public works employee of a governmental unit, or volunteer  
122 acting officially under the authorization of the governmental unit,  
123 that is a party to the statewide municipal mutual assistance agreement  
124 shall maintain the right of indemnification granted by law, or  
125 by his home governmental unit, should it exist, for all claims  
126 arising out of any action within the scope of employment in accordance  
127 with the statewide municipal mutual assistance agreement  
128 pursuant to this section.

129 (n) All public works employees and equipment requested and  
130 deployed pursuant to the statewide municipal mutual assistance  
131 agreement shall be covered for liability, immunity, employee  
132 benefits, worker's compensation and insurance, by their employer, as  
133 if they were in their own jurisdiction. Participating governmental  
134 units may, by supplemental agreement with one or more participating  
135 governmental units, address issues such as but not limited  
136 to pay and benefits for government unit employees and volunteers,  
137 insurance, indemnification, injury compensation and other  
138 operational matters related to services provided under a mutual  
139 aid response.

140 (o) Barring a supplemental agreement to the contrary, public  
141 works employees shall receive the same compensation as if they  
142 were operating in their own jurisdiction while performing services  
143 under the statewide municipal mutual assistance agreement.

144 (p) All activities performed under the statewide municipal  
145 mutual assistance agreement by governmental units are hereby  
146 declared to be governmental functions. Neither the parties, nor,

147 except in cases of willful misconduct, gross negligence, or bad  
148 faith, their personnel complying with or reasonably attempting to  
149 comply with the mutual aid agreement or any ordinance, rule, or  
150 regulation enacted or promulgated pursuant to the provisions of  
151 this section shall not be held liable for the death of or injury to  
152 persons or for damage to property as a result of any such activity.

153 (q) Public works employees of a governmental unit that is a  
154 party to the statewide municipal mutual assistance agreement shall  
155 be granted recognition of their respective jurisdiction, authority,  
156 licenses or permits outside their original jurisdiction while operating  
157 under the statewide municipal mutual assistance agreement.

158 (r) This section shall not affect inter-local agreements established  
159 pursuant to section 4A of chapter 40 of the general laws.

160 (s) The Statewide Municipal Mutual Assistance Committee  
161 shall develop and make available to participating governmental  
162 units forms to facilitate requests for aid, and to facilitate record  
163 keeping of movement of public works equipment and personnel.