

HOUSE No. 1992

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen Kulik

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 works agencies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Stephen Kulik	1st Franklin
John W. Scibak	2nd Hampshire
Anne M. Gobi	5th Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT FACILITATING THE FORMATION OF STATEWIDE MUTUAL AID AGREEMENTS FOR PUBLIC WORKS 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 SECTION 1. Chapter 40 of the General Laws is hereby amended by inserting the following new section:-

2 Chapter 40, Section 4J. The Statewide Municipal Mutual Assistance Program (a)(i) “The statewide
3 municipal mutual assistance agreement for public works” is defined as a comprehensive statewide
4 agreement entered into by participating governmental units for the facilitation and provision of sharing of
5 public works resources across jurisdictional lines in the case of public works incidents that require
6 assistance from one or more additional municipalities.

7 (ii) “Governmental unit” is defined as a city, town, county, district as defined in Section 1A, however
8 constituted, water or sewer commission established under the provisions of chapter 40N or pursuant to a
9 special law, fire district, or other political entity of the Commonwealth or its municipalities.

10 (b) There shall be a statewide mutual assistance agreement developed for Public Works activities, by the
11 Statewide Municipal Mutual Assistance Advisory Committee, that covers public works services,
12 personnel, equipment, supplies and facilities to prepare for, prevent, mitigate, respond to and recover
13 from incidents that require assistance from additional municipalities, consistent with the provisions
14 herein. Nothing in this section shall establish or apply to mutual aid agreements among local public
15 safety agencies. All municipalities of the Commonwealth shall be eligible for enrollment in the
16 statewide municipal mutual assistance agreement. In order to participate in the program, the chief
17 executive officer of a city or town, or as otherwise specified by statute or charter, must sign the mutual
18 assistance agreement. Participation shall exist for a period of ten years. Other governmental units not
19 under the direction and control of a commonwealth municipality shall be authorized to sign on to the
20 statewide mutual aid agreement on a form filed with and prescribed by the Statewide Municipal Mutual
21 Assistance Advisory Committee. In addition, governmental units from a municipality directly adjacent to
22 a commonwealth municipality, but in another state, shall be able to sign on to the statewide mutual aid
23 agreement, if duly authorized, on a form prescribed by the Statewide Municipal Mutual Assistance
24 Advisory Committee.

25 (c) There will be an annual open enrollment period for those communities who are not part of the
26 Statewide Municipal Mutual Assistance Program. The date of the open enrollment period and any other
27 requirements will be established by the Statewide Municipal Mutual Assistance Advisory Committee. In
28 addition, a community may opt out of the program at any time by informing the Statewide Mutual
29 Assistance Advisory Committee, in writing, of its intent to terminate participation in the program. This
30 request for removal from the program shall be executed by the chief executive officer of a city or town, or
31 as otherwise specified by statute or charter.

32 (d) There shall be a Statewide Municipal Mutual Assistance Advisory Committee that shall consist of one
33 appointee made by the following parties: the Massachusetts Highway Association, the New England
34 Chapter of the American Public Works Association (Massachusetts Representative), the New England
35 Water Environment Association (Massachusetts Representative), New England Water Works Association
36 (Massachusetts Representative), the Massachusetts Tree Wardens Association and the Massachusetts
37 Municipal Association. One appointee from the Executive Office of Public Safety and one member from
38 each of the state's Regional Planning Agencies shall serve as Ex-officio members.

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

42 (f) Each participating governmental unit shall identify no less than one, but no more than three points of
43 contact within its public works agency, and shall provide for contacts consistent with the governmental
44 unit's so-called continuation of operation/continuation of governance plan.

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

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

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

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

54 The request must include the following information:

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

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

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

- 60 (i) The responding governmental unit shall not be required to respond to a request and may choose to do
61 so only if responding would not jeopardize the participating municipality's own reasonable protection.
- 62 (j) The dispatch of public works resources under the statewide mutual assistance agreement shall operate
63 under the direction of their parent agency. Tactical operational control of resources shall be under the
64 direction and control of the requesting jurisdiction. The administration and coordination of the statewide
65 mutual aid agreement shall be the responsibility of the Statewide Municipal Mutual Assistance Advisory
66 Committee.
- 67 (k) Reimbursement for any and all public works services performed under the statewide municipal mutual
68 assistance agreement is presumed, but may be waived in writing by a participating municipality prior or
69 subsequent to responding to an incident through a supplemental agreement. This section shall not provide
70 for reimbursement of any kind outside of what is agreed to by the individual governmental units.
- 71 (l) Notwithstanding section 4A of chapter 40 of the general laws, the chief executive officer of a city or
72 town, or as otherwise specified by statute or charter, is hereby authorized to enter into supplemental
73 agreements on behalf of such unit with other governmental units to further define the rights and
74 responsibilities of each party for the provision of mutual aid pursuant to the statewide municipal mutual
75 assistance agreement established herein.
- 76 (m) While in transit to, returning from, and during a mutual assistance response for another governmental
77 unit, a participating public works employee of a governmental unit, or volunteer acting officially under
78 the authorization of the governmental unit, that is a party to the statewide municipal mutual assistance
79 agreement shall maintain the right of indemnification granted by law, or by his home governmental unit,
80 should it exist, for all claims arising out of any action within the scope of employment in accordance with
81 the statewide municipal mutual assistance agreement pursuant to this section.
- 82 (n) All public works employees and equipment requested and deployed pursuant to the statewide
83 municipal mutual assistance agreement shall be covered for liability, immunity, employee benefits,
84 worker's compensation and insurance, by their employer, as if they were in their own jurisdiction.
85 Participating governmental units may, by supplemental agreement with one or more participating
86 governmental units, address issues such as but not limited to pay and benefits for government unit
87 employees and volunteers, insurance, indemnification, injury compensation and other operational matters
88 related to services provided under a mutual aid response.
- 89 (o) Barring a supplemental agreement to the contrary, public works employees shall receive the same
90 compensation as if they were operating in their own jurisdiction while performing services under the
91 statewide municipal mutual assistance agreement.
- 92 (p) All activities performed under the statewide municipal mutual assistance agreement by governmental
93 units are hereby declared to be governmental functions. Neither the parties, nor, except in cases of willful
94 misconduct, gross negligence, or bad faith, their personnel complying with or reasonably attempting to
95 comply with the mutual aid agreement or any ordinance, rule, or regulation enacted or promulgated
96 pursuant to the provisions of this section shall not be held liable for the death of or injury to persons or for
97 damage to property as a result of any such activity.

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

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

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