

HOUSE No. 2005

The Commonwealth of Massachusetts

PRESENTED BY:

John H. Rogers

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:

John H. Rogers

DISTRICT/ADDRESS:

12th Norfolk

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 the following new
2 section:

3 Chapter 40, Section 4J. The Statewide Municipal Mutual Assistance Program.

4 (a)(i) "The statewide municipal mutual assistance agreement for public works" is
5 defined as a comprehensive statewide agreement entered into by participating
6 governmental units for the facilitation and provision of sharing of public works
7 resources across jurisdictional lines in the case of public works incidents that require
8 assistance from one or more additional municipalities. .

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

13 (b) There shall be a statewide mutual assistance agreement developed for Public
14 Works activities, by the Statewide Municipal Mutual Assistance Advisory Committee
15 that covers Public Works services, personnel, equipment, supplies and facilities to
16 prepare for, prevent, mitigate, respond to and recover from incidents that require
17 assistance from additional municipalities, consistent with the provisions herein.
18 Nothing in this section shall establish or apply to mutual aid agreements among local
19 public safety agencies. All 351 municipalities of the commonwealth shall be required to
20 opt into the statewide municipal mutual assistance agreement, within one year of the
21 enactment of the legislation. The chief executive officer of a city or town, or as otherwise
22 specified by statute or charter must sign the mutual assistance agreement. If a

23 community does not execute the agreement, it is assumed that the community will not be
24 a participant. Participation shall exist for a period of ten years. Other governmental units
25 not under the direction and control of a commonwealth municipality shall be authorized
26 to sign on to the statewide mutual aid agreement on a form filed with and prescribed by
27 the Statewide Municipal Mutual Assistance Advisory Committee. In addition,
28 governmental units from a municipality directly adjacent to a commonwealth
29 municipality, but in another state, shall be able to sign on to the statewide mutual aid
30 agreement if duly authorized on a form prescribed by the Statewide Municipal Mutual
31 Assistance Advisory Committee.

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

40 (d) There shall be a Statewide Municipal Mutual Assistance Advisory Committee
41 that shall consist of one appointee made by the following parties" the Massachusetts
42 Highway Association, the New England Chapter of the American Public Works
43 Association (Massachusetts Representative), the New England Water Environment
44 Association (Massachusetts Representative), Massachusetts Tree Wardens Association
45 and the Mass Water Works Association. One appointee from the Executive Office of
46 Public Safety and one member from each of the state's Regional Planning Agencies shall
47 serve as Ex-officio members.

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

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

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

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

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

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

66 The request must include the following information:

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

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

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

73 (i) The responding governmental unit shall not be required to respond to a request
74 and may choose to do so only if responding would not jeopardize the participating
75 municipality's own reasonable protection.

76 (j) The dispatch of public works resources under the statewide mutual assistance
77 agreement shall operate under the direction of their parent agency. Tactical operational
78 control of resources shall be under the direction and control of the requesting
79 jurisdiction. The administration and coordination of the statewide mutual aid agreement
80 shall be the responsibility of the Statewide Municipal Mutual Assistance Advisory
81 Committee.

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

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

93 (m) While in transit to, returning from, and during a mutual assistance response for
94 another governmental unit, a participating public works employee of a governmental
95 unit, or volunteer acting officially under the authorization of the governmental unit, that
96 is a party to the statewide municipal mutual assistance agreement shall maintain the right
97 of indemnification granted by law, or by his home governmental unit, should it exist, for

98 all claims arising out of any action within the scope of employment in accordance with
99 the statewide municipal mutual assistance agreement pursuant to this section.

100 (n) All public works employees and equipment requested and deployed pursuant to
101 the statewide municipal mutual assistance agreement shall be covered for liability,
102 immunity, employee benefits, worker's compensation and insurance, by their employer,
103 as if they were in their own jurisdiction. Participating governmental units may, by
104 supplemental agreement with one or more participating governmental units, address
105 issues such as, but not limited to, pay and benefit for government unit employees and
106 volunteers, insurance, indemnification, injury compensation and other operational
107 matters related to services provided under a mutual aid response.

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

111 (p) All activities performed under the statewide municipal mutual assistance
112 agreement by governmental units are hereby declared to be governmental function.
113 Neither the parties, nor, except in cases of willful misconduct, gross negligence, or bad
114 faith, their personnel complying with or reasonable attempting to comply with the
115 mutual aid agreement or any ordinance, rule or regulation enacted or promulgated
116 pursuant to the provisions of this section shall not be held liable for the death or injury to
117 persons or for damage to property as a result of any such activity.

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

122 (r) This section shall not affect inter-local agreements established pursuant to section
123 4A of chapter 40 of the general laws.

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