

SENATE No. 970

The Commonwealth of Massachusetts

PRESENTED BY:

Michael F. Rush

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 adoption of the accompanying bill:

An Act to promote worksite safety and restoration of local roads.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>
<i>Mayor Thomas M. Menino</i>	<i>Boston City Hall One City Hall Square Boston, MA 02201</i>
<i>Carlo Basile</i>	<i>1st Suffolk</i>
<i>Christopher G. Fallon</i>	<i>33rd Middlesex</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>

SENATE No. 970

By Mr. Rush, a petition (accompanied by bill, Senate, No. 970) of Michael F. Rush, Mayor Thomas M. Menino, Carlo Basile, Christopher G. Fallon and other members of the General Court for legislation to promote worksite safety and restoration of local roads. Municipalities and Regional Government.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to promote worksite safety and restoration of local roads.

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, as appearing in the 2010 Official Edition,
2 is hereby amended by inserting after section 21D the following section:-

3 Section 21D1/2. (a) When any city or town, or board, commission, or officer thereof
4 having control of the public ways, adopts ordinances, bylaws, rules, or regulations establishing
5 safety standards or standards for the proper restoration of public ways to be followed by persons
6 permitted to open or dig up a public way, such city or town may by ordinance or by-law not
7 inconsistent with this section provide for the non-criminal disposition of violations of any such
8 ordinance, by-law, rule, or regulation. A city or town may fix fines as penalties for violations of
9 such ordinances, bylaws, rules or regulations. Such fines may not exceed three-hundred dollars
10 for the first five documented violations by any person or entity in a calendar year, may not
11 exceed five-hundred dollars for the sixth- through- tenth documented violations by any person or
12 entity in a calendar year, and may not exceed one-thousand dollars for the eleventh or any
13 subsequent documented violation by any person or entity in a calendar year. For purposes of this
14 paragraph, each day that a violation of a local ordinance, bylaw, rule or regulation persists can
15 constitute a separate violation.

16 Any such ordinance or by-law may provide that the non-criminal enforcement and
17 disposition of any violation of an ordinance, by-law, rule or regulation establishing safety
18 standards or standards for the proper restoration of public ways to be followed by persons
19 permitted to open or dig up a public way shall be pursuant to section 21D of chapter 40 of the
20 General Laws. Alternatively, an ordinance or by-law may provide for the administrative

21 disposition of non-criminal violations of ordinances, by-laws, rules or regulations establishing
22 safety standards or standards for the proper restoration of public ways pursuant to subsections (b)
23 through (k).

24 (b) The body, board, commission, or officer having responsibility for the maintenance
25 and construction of public ways in a municipality shall appoint a hearing officer. The hearing
26 officer shall hear appeals of violation notices issued within the municipality for violations of any
27 ordinance, bylaw, rule, or regulation establishing safety standards or standards for the proper
28 restoration of public ways to be followed by persons permitted to open or dig up a public way.
29 The hearing officer may be a member or employee of the body, board, commission, or officer
30 having control of the maintenance and construction of public ways, and the hearing officer's
31 other duties may include participation in the formation of safety standards or standards for the
32 proper restoration of public ways to be followed by persons permitted to open or dig up a public
33 way. However, the hearing officer shall not be involved in the issuance of individual permits to
34 open or dig up the public way, or the inspection of compliance with safety or restoration
35 standards imposed on persons permitted to open or dig up the public way. Under no
36 circumstances shall the hearing officer participate in any way in the decision to issue a notice of
37 violation that will be subject to a hearing under this section.

38 (c) Every officer and inspector empowered to enforce violations of ordinances, bylaws,
39 rules, or regulations establishing safety standards or standards for the proper restoration of public
40 ways to be followed by persons permitted to open or dig up a public way who takes notice of a
41 violation of such, shall provide the offender with a notice forthwith, which shall be in the form of
42 a written notice of violation, to appear before the hearing officer or the hearing officer's designee
43 during regular office hours, not later than 21 days after the date of such violation. All notices of
44 violation shall be prepared in triplicate or by the use of an automated ticketing device and shall
45 be pre-numbered.

46 (d) The notice of violation shall be presented to the person in charge of any permitted
47 worksite, if present, and shall contain, but shall not be limited, to: the date, time and place of the
48 violation, the specific violation charged, the name and badge number of the officer or inspector
49 and his division, a schedule of payment for established fines and instructions for return of the
50 notice of violation. If there is no representative or employee of the permit holder present at the
51 site when the officer or inspector takes notice of the violation, he shall deliver the notice of
52 violation to the body, board, commission, or officer having responsibility for the maintenance
53 and construction of public ways within the time specified in subsection (e), who shall, not later
54 than the end of the next business day after receipt of the notice, mail the notice of violation to the
55 person or entity permitted to work at the site where the violation was discovered.

56 (e) Within 3 business days after completion of each shift, the officer or inspector shall
57 give to the body, board, commission, or officer having responsibility for the maintenance and
58 construction of public ways those copies of each notice of a violation issued during such shift.

59 The body, board, commission, or officer having responsibility for the maintenance and
60 construction of public ways shall retain and preserve 1 copy and shall, not later than the end of
61 the next business day after receipt of the notice, deliver another copy to the hearing officer
62 before whom the offender has been notified to appear, unless the ticket was produced by an
63 automated ticketing device, in which case no duplicate copies need be retained. The municipal
64 hearing officer shall maintain a docket of all such notices to appear. Within 5 business days of
65 receiving the notice of violation, the body, board, commission, or officer having responsibility
66 for the maintenance and construction of public ways in a municipality shall determine whether
67 the violation is subject to an escalated fine as a subsequent documented violation under the city
68 or town ordinance or bylaw as authorized by subsection (a) of this section. If so, within 6
69 business days of receiving the notice, it shall deliver an amended copy of the notice reflecting the
70 increased fine to the hearing officer and shall mail the amended notice reflecting the increased
71 fine to the person or entity permitted to work at the site where the violation was discovered. For
72 purposes of making this determination, a documented violation shall include all noticed
73 violations, whether or not under appeal, that have not been dismissed by the hearing officer or a
74 court. In the event that a notice of violation that is treated as a documented violation that
75 increases a subsequent fine actually paid by any person is subsequently dismissed by a hearing
76 officer or court, that person shall be entitled to a refund from the city or town, which he is
77 entitled, but not required to receive in the form of a deduction from the fee to be paid for any
78 subsequent permit to open or dig up a public way.

79 (f) The municipality shall, by ordinance or by-law, establish a schedule of fines for
80 violations of ordinances, bylaws, rules, or regulations establishing safety standards or standards
81 for the proper restoration of public ways to be followed by persons permitted to open or dig up a
82 public way, subject to the limitations imposed in subsection (a).

83 (g) Where a notice of violation is issued for a violation of an ordinance, bylaw, rule, or
84 regulation establishing safety standards or standards for the proper restoration of public ways to
85 be followed by persons permitted to open or dig up a public way, the alleged violator, within 21
86 days, shall return the notice of violation by mail, personally or by an authorized person, to the
87 hearing officer and shall either: (1) pay in full the scheduled fine by check, postal note, money
88 order or other legal tender; or (2) request a hearing before the hearing officer. Each violation
89 issued shall contain a statement explaining the procedure to adjudicate the violation by mail. Any
90 amounts paid shall be payable to the municipality. If a fine remains unpaid for 21 days and no
91 hearing has been requested, a letter shall be sent to the person or entity permitted to work at the
92 site where the violation was discovered, with a processing fee of not more than \$10, notifying
93 him that the fine shall be paid within 30 days after receipt of that notice unless within 14 days of
94 receiving that notice the person or entity permitted to work at the site where the violation was
95 discovered requests a hearing before the hearing officer and swears in writing under the pains
96 and penalties of perjury that the person or entity did not receive the notice of violation.
97 Thereafter, any fine which remains unpaid may be added to the fee that may be charged by the

98 city or town for any permit to open or dig up a public way that the person or entity applies for on
99 or after the expiration of the 30 day period.

100 (h) Any person notified to appear before the hearing officer, as provided herein may,
101 without waiving the right to a hearing provided by this chapter and without waiving judicial
102 review as provided in subsection (j), challenge the validity of the violation notice and receive a
103 review and disposition of the violation from the hearing officer by mail. The alleged violator
104 may, upon receipt of the notice to appear, send a signed statement of objections to the violation
105 notice as well as signed statements from witnesses, police officers, government officials and
106 other relevant parties. Photographs, diagrams, maps and other documents may also be sent with
107 the statements. Any statements or materials sent to the municipal hearing officer for review shall
108 have attached; the person's name and complete address as well as the notice of violation number
109 and the date of the violation. The hearing officer shall, within 21 days after receipt of such
110 material, review the material and dismiss or uphold the violation and notify the alleged violator
111 by mail of the disposition of the hearing. Such review and disposition conducted by mail shall be
112 informal, the rules of evidence shall not apply and the decision of the hearing officer shall be
113 final, subject to any hearing provisions allowing for judicial review. If the outcome of the
114 hearing is against the alleged violator, the hearing officer shall explain the reasons for the
115 outcome on the notice. If the outcome of the hearing is against the alleged violator, and he does
116 not appeal to a court pursuant to subsection (j), the person or entity that received the violation
117 must pay the fine within 21 days of being given notice of the decision. Thereafter, unless an
118 appeal is filed pursuant to subsection (j), any fine which remains unpaid may be added to the fee
119 that may be charged by the city or town for any permit to open or dig up a public way that the
120 person or entity applies for on or after the expiration of the 21 day period.

121 (i) If the alleged violator requests a hearing before the municipal hearing officer in a
122 timely manner, the hearing officer shall schedule a hearing not later than 45 days after receiving
123 the hearing request. The hearing officer shall duly notify the alleged violator of the date, time
124 and location of the hearing. When a hearing notice is sent, the alleged violator shall be given an
125 opportunity to request a rescheduled hearing date. If a person fails to appear at the scheduled
126 hearing without good cause, the appeal shall be dismissed and the violator shall waive any
127 further right of appeal. The hearing officer shall receive annual training in the conduct of
128 administrative hearings. The hearing and disposition shall be informal and shall follow the rules
129 set forth in chapter 30A. Rules for judicial proceedings shall not apply. In conducting the
130 hearing, the hearing officer shall determine whether the violation occurred and whether it was
131 committed by the person or entity notified to appear. If the outcome of the hearing is against the
132 alleged violator, and he does not appeal to a court pursuant to subsection (j), the person or entity
133 that received the violation must pay the fine within 21 days of being given notice of the decision.
134 Thereafter, unless an appeal is filed, any fine which remains unpaid may be added to the fee that
135 may be charged by the city or town for any permit to open or dig up a public way that the person
136 or entity applies for on or after the expiration of the 21 day period.

137 (j) A person aggrieved by a decision of the hearing officer may appeal to the district court
138 for the jurisdiction where the alleged offense occurred, or the Boston Municipal Court for
139 offenses alleged to have occurred in Boston, on a form provided by the municipality, and shall be
140 entitled to a de novo hearing before a clerk magistrate of the court. The court shall consider such
141 appeals under a civil standard. The aggrieved person shall file the appeal within 10 days after
142 receiving notice of the decision from the hearing officer who conducted the hearing. If the
143 outcome of the court proceeding is against the alleged violator, the person or entity that received
144 the violation must pay the fine within 21 days of being given notice of the decision. Thereafter,
145 any fine which remains unpaid may be added to the fee that may be charged by the city or town
146 for any permit to open or dig up a public way that the person or entity applies for on or after the
147 expiration of the 21 day period.

148 (k) All fines, penalties or assessments in actions under this section shall be paid to the
149 general fund of the municipality.

150 SECTION 2. Section 70 of Chapter 164 of the General Laws, as appearing in the 2010
151 Official Edition, is hereby amended by striking out the last sentence and inserting in place
152 thereof the following sentence:-

153 A gas company will be subject to any local ordinances, bylaws, or regulations concerning
154 the digging up, opening, and repair of streets, lanes and highways except to the extent that any
155 such local ordinance, bylaw, or regulation requires the party opening the street, lane or highway
156 to repair it to any standard better than as good repair as it was in when opened.

157 SECTION 3. Section 76 of Chapter 164 of the General Laws, as appearing in the 2010
158 Official Edition, is hereby amended by inserting, after the last sentence, the following
159 paragraph:-

160 The department's power of general supervision shall not preempt or replace local laws or
161 regulations concerning local traffic and site safety measures and standards for proper restoration
162 of a roadway owned by a municipality to be followed by persons permitted to open or dig up a
163 public way, provided that such local rules: (i) are established by local ordinances, bylaws, rules,
164 or regulations and imposed as a condition of all permits to dig up or open public ways in said
165 municipality; (ii) apply to all persons receiving a permit to open or dig up public ways, including
166 any contractor working for the municipality.