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SENATE . . . . . No. 2095

Senate, April 10, 2014 – Text of the Senate amendment to the House Bill relative to natural gas leaks (House, No. 3873, amended) (being the text of Senate, No. 2073, printed as amended)

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act Natural Gas Leaks.

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

SECTION 1. Section 105A of chapter 164 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

Any person, firm or corporation who violates any provision of any code adopted by the department pertaining to the safety of pipeline facilities and the transportation of gas, or any regulation or rule thereunder, at a time when the department has submitted and has in effect the annual certification to the United States Secretary of Transportation provided for in 49 U.S.C. § 60105 shall be subject to civil penalties as specified in 49 U.S.C. § 60122(a)(1) or any successor statute enacted into federal law for the same purposes as said § 60122(a)(1).

SECTION 2. Said chapter 164 of the General Laws is hereby further amended by adding the following 2 sections:-

Section 144. (a) There shall be uniform natural gas leak classification standards in the commonwealth for all natural gas companies.

(b) (1) Gas companies shall assess a grade to all reported gas leaks based on the system provided in this section.

(2) A Grade 1 leak shall be a leak that represents an existing or probable hazard to persons or property. Grade 1 leaks require repair as immediately as possible and continuous action until the conditions are no longer hazardous. The gas company shall immediately schedule a completion of repairs and the condition shall be kept under continuous surveillance until the hazard or source of the leak is eliminated. A gas company shall immediately notify the fire

department and chief law enforcement officer in each city or town where a Grade 1 leak is identified.

(3) A Grade 2 leak shall be a leak that is recognized as non-hazardous to persons or property at the time of detection, but justifies scheduled repair based on probable future hazard. The gas company shall repair Grade 2 leaks or replace the main within 12 months from the date the leak was classified. All Grade 2 leaks shall be reevaluated by a gas company at least once every 6 months until eliminated; provided, however, that the frequency of reevaluation shall be determined by the location and magnitude of the leakage condition.

(4) A Grade 3 leak shall be a leak that is recognized as non-hazardous to persons or property at the time of detection and can be reasonably expected to remain non-hazardous. The gas company shall reevaluate Grade 3 leaks during the next scheduled survey, or within 12 months from the date last evaluated, whichever occurs first, until the leak is eliminated or the main is replaced; provided, however, that Grade 3 leaks shall be repaired or replaced during significant projects on public ways exposing confirmed natural gas infrastructure under subsection (c). A municipal or state public safety official may request a reevaluation of a Grade 3 leak prior to the next scheduled survey, or sooner than 12 months of the date last evaluated, if the official reasonably believes that the Grade 3 leak poses a threat to public safety.

(c) Upon the undertaking of a significant project on a public way exposing confirmed natural gas infrastructure, a municipality or the commonwealth shall submit written notification of the project to a gas company. The gas company shall survey the project area for the presence of gas leaks and set repair and replacement schedules for all known or newly detected leaks. The gas company shall ensure that any shut off valve in the significant project area has a gate box installed upon it or a reasonable alternative that would otherwise ensure continued public safety and that any critical valve that has not been inspected and tested within the past 12 months is verified to be operational and accessible. The gas company shall provide the repair and replacement schedule of gas leaks to the municipality or the commonwealth.

(d) Gas companies shall prioritize any pipeline repairs required under this section for gas leaks detected within a school zone. For the purposes of this section, “school zone” shall mean on or within 50 feet of the real property comprising a public or private accredited preschool, accredited Head Start facility, elementary, vocational or secondary school. The department of public utilities shall develop a priority list for pipeline repairs, which may include, but need not be limited to, houses of worship, healthcare facilities, public or elder housing complexes, councils on aging, correctional facilities, rail or subway stations, courthouses and government office buildings.

(e) As part of the annual service quality standards report required by section 1I, each gas company shall report to the department the location of each Grade 1, Grade 2 and Grade 3 leak existing as of the date of the report, the date each Grade 1, Grade 2 and Grade 3 leak was

classified and the dates of repairs performed on each Grade 1, Grade 2 and Grade 3 leak. A gas company shall specify any reclassification of previously identified leaks in its annual report. Gas leak information may be made available by the department to interested persons upon written request, provided the department shall respond to all reasonable requests; provided, however, that gas leak information shall be made available to any municipal or state public safety official upon written request to the department.

(f) The department shall promulgate regulations necessary to implement the uniform natural gas leak classification standards as specified in this section and shall oversee and monitor company response and reporting; provided, however, that the regulations shall prevent a gas company from downgrading a Grade 1 or Grade 2 leak unless the leak is repaired.

Section 145. (a) For the purposes of this section, the following words shall have the following meanings unless context clearly requires otherwise:-

"Customer", a retail natural gas customer.

"Eligible infrastructure replacement", a replacement or an improvement of existing infrastructure of a gas company that: (i) is made on or after January 1, 2015; (ii) is designed to improve public safety or infrastructure reliability; (iii) does not increase the revenue of a gas company by connecting an improvement for a principal purpose of serving new customers; (iv) reduces, or has the potential to reduce, lost and unaccounted for natural gas losses through a reduction in natural gas system leaks; and (v) is not included in the current rate base of the gas company as determined in the gas company's most recent rate proceeding or is not included in any other targeted infrastructure replacement program previously approved by the department.

"Plan", a targeted infrastructure replacement program construction plan that a gas company files under subsection (b).

"Project", an eligible infrastructure replacement project proposed by a gas company in a plan filed under this section.

(b) A gas company may file with the department a plan to address aging or leaking natural gas infrastructure within the commonwealth in the interest of public safety and reducing lost and unaccounted for gas through a reduction in natural gas system leaks.

(c) Any plan filed with the department shall include, but not be limited to: (i) eligible infrastructure replacement of mains, services, meter sets and other ancillary facilities composed of non-cathodically protected steel, cast iron and wrought iron, prioritized to implement the federal gas distribution pipeline integrity management plan annually submitted to the department and consistent with subpart P of 49 C.F.R. part 192; (ii) an anticipated timeline for the completion of each project; (iii) the estimated cost of each project; (iv) rate change requests; (v)

a description of customer costs and benefits under the plan; and (vi) any other information the department considers necessary to evaluate the plan.

Upon filing a plan under this section, a gas company shall include a timeline for removing all leak-prone infrastructure on an accelerated basis specifying an annual replacement pace and program end date with a target end date of not more than 20 years, as adjusted by the allowable recovery under the cap established in subsection (f); provided, however, that the department may approve a plan with a target end date of more than 20 years, as adjusted by the allowable recovery under the cap established in subsection (f), if the target end date of more than 20 years is in the best interest of the ratepayer as determined by the department. After filing the initial plan, a gas company shall, at 5-year intervals, provide the department with a summary of its replacement progress to date, a summary of work to be completed during the next 5 years and any similar information the department may require.

(d) If a gas company files a plan on or before October 31 for the subsequent construction year, the department shall review the plan within 6 months. The plan shall be effective as of the date of filing, pending department review. The department may modify a plan prior to approval at the request of a gas company or make other modifications to a plan as a condition for approval. The department shall consider the costs and benefits of the plan, including, but not limited to, impacts on ratepayers, reductions of lost and unaccounted for gas through a reduction in natural gas system leaks and improvements to public safety. The department shall give priority to plans narrowly tailored to addressing leak-prone infrastructure most immediately in need of replacement.

(e) If a plan is in compliance with this section and the department determines the plan to reasonably accelerate eligible infrastructure replacement and provide benefits, the department shall issue preliminary acceptance of the plan in whole or in part. A gas company shall then be permitted to begin recovery of the estimated costs of projects included in the plan beginning on May 1 of the year following the initial filing and collect any revenue requirement, including depreciation, property taxes and return associated with the plan.

(f) On or before May 1 of each year, a gas company shall file final project documentation to demonstrate substantial compliance with the plan approved under subsection (e) and that project costs were reasonably and prudently incurred. The department shall investigate project costs within 6 months of submission and shall approve and reconcile the authorized rate factor, if necessary, upon a determination that the costs were reasonable and prudent. Annual changes in the revenue requirement eligible for recovery shall not exceed 1.5 per cent of the gas company's most recent calendar year total firm revenues, including gas revenues attributable to sales and transportation customers. Any revenue requirement approved by the department in excess of the 1.5 per cent total firm revenue cap may be deferred for recovery in the following year.

(g) All rate change requests made to the department pursuant to an approved plan, which provides a public safety benefit, shall be filed annually on a fully reconciling basis. A gas company shall file reconciliation adjustment rates, which shall be subject to investigation by the department under subsection (f) to determine whether the company has over-collected or under-collected its requested rate adjustment. The reconciliation adjustment rates shall become effective pursuant to a department order pending the investigation under said subsection (f). If the department determines that any of the costs were not reasonably or prudently incurred or were not in compliance with the approved plan, the department shall disallow the costs and shall direct the gas company to refund the full value of the costs charged to customers in the next reconciliation filing with the appropriate carrying charges on the over-collected amounts.

(h) The department shall promulgate rules and regulations under this section, which shall include a procedure that discontinues the replacement program and requires a gas company to refund any costs charged to customers due to failure to substantially comply with a plan or failure to reasonably and prudently manage project costs.

SECTION 3. On or before January 1, 2015, the department of public utilities shall authorize gas companies to design and offer programs to customers which increase the availability, affordability and feasibility of natural gas service for new customers.

(a) As part of the department's approval of a program and prior to implementation of a program, the department shall: (i) review each gas company's determination that a main or service extension is economically feasible; (ii) review each gas company's contribution in aid of construction policy and methodology; and (iii) consider alternative rate mechanisms or company project review methodology that facilitate access to natural gas service for new customers, including, but not limited to, (1) new service-territory-wide surcharges to aid in the financing of gas service expansion to new off-main customers; (2) new area surcharges applicable only to zones of new off-main customers to aid in the financing of gas service expansion to new off-main customers; or (3) both; provided, however, that natural gas distribution system expansion surcharges shall not unreasonably burden existing customers. Guidelines established under this subsection shall outline the department's methods and procedures for reviewing proposals, including factors the department shall consider for program or policy approval.

(b) Gas companies may petition the department independently or in coordination with the department of energy resources to approve: (i) financing programs for customer natural gas conversion costs repaid on participating customer bills; (ii) other financing programs developed by a gas company; or (iii) other cost-effective programs that reasonably accelerate the expansion of and conversion to natural gas usage in the commonwealth; provided, however, that the programs do not unreasonably burden existing natural gas customers.

(c) The department shall issue a decision on gas company expansion programs filed with the department pursuant to this section within 8 months of the filing date. Gas companies shall

file appropriate tariff changes and otherwise implement any gas expansion programs or policies approved under this section.

(d) The department shall consider programs that are likely to accelerate the conversion or expansion to natural gas usage for low-income consumers currently eligible for the federal Low Income Home Energy Assistance Program, 42 U.S.C. § 8621 et seq., including programs that exempt new residential low-income heating customers from any new area surcharge developed under this section. Notwithstanding subsection (b), the department may approve alternative methods of cost recovery by a gas company for low-income programs, policies or exemptions including impacts on uncollectible costs and shall exempt low-income customers eligible for the federal Low Income Home Energy Assistance Program from any new surcharge imposed under subsection (a).

SECTION 4. Notwithstanding any general or special law to the contrary, the department of public utilities shall open an investigation into gas operator compliance with the directives set forth in its Order D.T.E.\D.P.U. 06-48-A. The department shall complete its investigation and submit its findings to the clerks of the house of representatives and the senate and the house and senate chairs of the joint committee on telecommunications, utilities and energy not later than June 1, 2015.

SECTION 5. Notwithstanding any general or special law to the contrary, the department of public utilities shall, after determination by a gas company or a local or state public safety official that a gas leak has caused an explosion, issue written findings as to why an investigation is or is not necessary to determine the cause of the explosion.

SECTION 6. Notwithstanding any general or special law to the contrary, the secretary of public safety and security or a designee shall issue a report on the adequacy of state regulations governing the safety standards for utility transformer vaults located within buildings subject to the state building code. The report shall include, but not necessarily be limited to, an analysis of the standards for access, structural integrity, ventilation and lighting requirements of the regulations and the inspection and enforcement requirements, if any, of the regulations. The report shall further address structural limitations of older buildings containing utility transformer vaults, any ancillary costs, including the cost of inspections and possible costs to businesses and municipalities to comply with any proposed new regulations, and any recommendations for legislation necessary to further implement minimum safety standards for utility transformer vaults. The report, together with any proposed regulations or legislation necessary to carry out the recommendations, shall be submitted to the clerks of the house of representatives and the senate not later than November 15, 2014.

SECTION 7. Notwithstanding any general or special law to the contrary, explosive material, as defined in 527 CMR 13.03, shall not be used to fire a blast in any blasting operation

within 500 feet of a natural gas pipeline or metering and regulation station without written approval by the department of public utilities.

SECTION 8. The department shall investigate whether it should require the winter surveillance and patrol of cast iron gas pipelines in the commonwealth and shall determine whether the presence of extended frost cap conditions may result in additional stress on cast iron pipe segments, requiring enhanced surveillance and patrol. The department may establish minimum uniform procedures for cast iron winter surveillance and patrols consistent with any federally mandated standards for integrity management programs for distribution pipelines. Gas companies may establish procedures that exceed any minimum standards, subject to applicable filing requirements with the department.

SECTION 9. The department of public utilities shall issue a report addressing the prevalence of gas leaks in the natural gas system. The report shall include, but not be limited to: (i) the total number of Grade 1, Grade 2 and Grade 3 leaks reported in the previous year; (ii) estimates for lost and unaccounted for natural gas and methane emissions as a result of Grade 1, Grade 2 and Grade 3 leaks; and (iii) time and cost estimates for eliminating the backlog of Grade 1, Grade 2 and Grade 3 leaks. The department shall issue the first report not later than 1 year after the effective date of this act. The second and all subsequent reports shall be filed annually thereafter until the department determines that the backlog has been sufficiently addressed and the natural gas pipeline is in a state of good repair. The final annual report issued by the department pursuant to this section shall detail the total cost of eliminating the backlog and the annual estimated cost to maintain a state of good repair. The second report and all subsequent reports shall be filed with the house and senate chairs of the joint committee on telecommunications, utilities and energy and the house and senate chairs of the joint committee on public safety and homeland security not later than December 31 of each year.

SECTION 10. Section 145 of chapter 164 of the General Laws shall take effect on October 1, 2014.