

HOUSE No. 4164

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2095) of the House Bill relative to natural gas leaks (House, No. 3873, amended), reported recommending passage of a bill with the same title (House, No. 4164). June 9, 2014.

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In the Year Two Thousand Fourteen

An Act relative to 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:

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

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

10 SECTION 2. Said chapter 164 is hereby further amended by adding the following 2
11 sections:-

12 Section 144. (a) There shall be uniform natural gas leaks classification for all gas
13 companies.

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

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

21 shall notify the fire department and chief law enforcement officer in each city or town where a
22 Grade 1 leak is identified.

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

29 (4) A Grade 3 leak shall be a leak that is recognized as non-hazardous to persons or
30 property at the time of detection and can be reasonably expected to remain non-hazardous. The
31 gas company shall reevaluate Grade 3 leaks during the next scheduled survey, or within 12
32 months from the date last evaluated, whichever occurs first, until the leak is eliminated or the
33 main is replaced. A municipal or state public safety official may request a reevaluation of a
34 Grade 3 leak prior to the next scheduled survey, or sooner than 12 months of the date last
35 evaluated, if the official reasonably believes that the Grade 3 leak poses a threat to public safety.

36 (c) Upon the undertaking of a significant project on a public way exposing confirmed
37 natural gas infrastructure, and with sufficient notice, a municipality or the commonwealth shall
38 submit written notification of the project to a gas company. The gas company shall survey the
39 project area for the presence of Grade 1 or Grade 2 leaks and set repair and replacement
40 schedules for all known or newly detected Grade 1 or Grade 2 leaks. The gas company shall
41 ensure that any shut off valve in the significant project area has a gate box installed upon it or a
42 reasonable alternative that would otherwise ensure continued public safety and that any critical
43 valve that has not been inspected and tested within the past 12 months is verified to be
44 operational and accessible. The gas company shall provide the repair and replacement schedule
45 of gas leaks to the municipality or the commonwealth.

46 (d) Gas companies shall prioritize any pipeline repairs required under this section for gas
47 leaks detected within a school zone. For the purposes of this section, "school zone" shall mean
48 on or within 50 feet of the real property comprising a public or private accredited preschool,
49 accredited Head Start facility, elementary, vocational or secondary school.

50 (e) As part of the annual service quality standards report required by section 1I, each gas
51 company shall report to the department the location of each Grade 1, Grade 2 and Grade 3 leak
52 existing as of the date of the report, the date each Grade 1, Grade 2 and Grade 3 leak was
53 classified and the dates of repairs performed on each Grade 1, Grade 2 and Grade 3 leak. A gas
54 company shall specify any reclassification of previously identified leaks in its annual report. Gas
55 leak information shall be made available to any municipal or state public safety official upon
56 written request to the department.

57 (f) The department shall promulgate regulations necessary to implement the uniform
58 natural gas leak classifications as specified in this section and shall oversee and monitor
59 company response and reporting.

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

62 “Customer”, a retail natural gas customer.

63 “Eligible infrastructure replacement”, a replacement or an improvement of existing
64 infrastructure of a gas company that: (i) is made on or after January 1, 2015; (ii) is designed to
65 improve public safety or infrastructure reliability; (iii) does not increase the revenue of a gas
66 company by connecting an improvement for a principal purpose of serving new customers; (iv)
67 reduces, or has the potential to reduce, lost and unaccounted for natural gas through a reduction
68 in natural gas system leaks; and (v) is not included in the current rate base of the gas company as
69 determined in the gas company’s most recent rate proceeding.

70 “Plan”, a targeted infrastructure replacement program construction plan that a gas
71 company files pursuant to subsection (b).

72 “Project”, an eligible infrastructure replacement project proposed by a gas company in a
73 plan filed under this section.

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

77 (c) Any plan filed with the department shall include, but not be limited to: (i) eligible
78 infrastructure replacement of mains, services, meter sets and other ancillary facilities composed
79 of non-cathodically protected steel, cast iron and wrought iron, prioritized to implement the
80 federal gas distribution pipeline integrity management plan annually submitted to the department
81 and consistent with subpart P of 49 C.F.R. part 192; (ii) an anticipated timeline for the
82 completion of each project; (iii) the estimated cost of each project; (iv) rate change requests; (v)
83 a description of customer costs and benefits under the plan; and (vi) any other information the
84 department considers necessary to evaluate the plan.

85 Upon filing an initial plan under this section, a gas company shall include a timeline for
86 removing all leak-prone infrastructure on an accelerated basis specifying an annual replacement
87 pace and program end date with a target end date of either (i) not more than 20 years, or (ii) a
88 reasonable target end date considering the allowable recovery cap established pursuant to
89 subsection (f). The department shall not approve a timeline as part of a plan unless the allowable
90 recovery cap established pursuant to subsection (f) provides the gas company with a reasonable
91 opportunity to recover the costs associated with removing all leak-prone infrastructure on the

92 accelerated basis set forth under the timeline utilizing the cost recovery mechanism established
93 pursuant to this section. After filing the initial plan, a gas company shall, at 5-year intervals,
94 provide the department with a summary of its replacement progress to date, a summary of work
95 to be completed during the next 5 years and any similar information the department may require.
96 The department may require a gas company to file an updated long-term timeline as part of a
97 plan if it alters the cap established pursuant to subsection (f).

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

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

113 (f) On or before May 1 of each year, a gas company shall file final project documentation
114 for projects completed in the prior year to demonstrate substantial compliance with the plan
115 approved pursuant to subsection (e) and that project costs were reasonably and prudently
116 incurred. The department shall investigate project costs within 6 months of submission and shall
117 approve and reconcile the authorized rate factor, if necessary, upon a determination that the costs
118 were reasonable and prudent. Annual changes in the revenue requirement eligible for recovery
119 shall not exceed (i) 1.5 per cent of the gas company's most recent calendar year total firm
120 revenues, including gas revenues attributable to sales and transportation customers, or (ii) an
121 amount determined by the department that is greater than 1.5 per cent of the gas company's most
122 recent calendar year total firm revenues, including gas revenues attributable to sales and
123 transportation customers. Any revenue requirement approved by the department in excess of
124 such cap may be deferred for recovery in the following year.

125 (g) All rate change requests made to the department pursuant to an approved plan, shall
126 be filed annually on a fully reconciling basis, subject to final determination by the department
127 pursuant to subsection (f). The rate change included in a plan pursuant to section (c), reviewed
128 pursuant to subsection (d) and taking effect each May 1 pursuant to subsection (e) shall be
129 subject to investigation by the department pursuant to subsection (f) to determine whether the gas

130 company has over collected or under collected its requested rate adjustment with such over
131 collection or under collection reconciled annually. If the department determines that any of the
132 costs were not reasonably or prudently incurred, the department shall disallow the costs and
133 direct the gas company to refund the full value of the costs charged to customers with the
134 appropriate carrying charges on the over-collected amounts. If the department determines that
135 any of the costs were not in compliance with the approved plan, the department shall disallow
136 the costs from the cost recovery mechanism established under this section and shall direct the gas
137 company to refund the full value of the costs charged to customers with the appropriate carrying
138 charges on the over collected amounts.

139 (h) The department may promulgate rules and regulations under this section. The
140 department may discontinue the replacement program and require a gas company to refund any
141 costs charged to customers due to failure to substantially comply with a plan or failure to
142 reasonably and prudently manage project costs.

143 SECTION 3. On or before January 1, 2015, the department of public utilities shall
144 authorize gas companies, as defined in section 1 of chapter 164 of the General Laws, to design
145 and offer programs to customers which increase the availability, affordability and feasibility of
146 natural gas service for new customers.

147 (a) As part of the department's approval of a program and prior to implementation of a
148 program, the department shall: (i) review each gas company's determination that a main or
149 service extension is economically feasible; (ii) review each gas company's contribution in aid of
150 construction policy and methodology; and (iii) allow for alternative rate mechanisms or company
151 project review methodology that facilitate access to natural gas service for new customers,
152 including: (1) new service-territory-wide surcharges to aid in the financing of gas service
153 expansion to new off-main customers; (2) new area surcharges applicable only to zones of new
154 off-main customers to aid in the financing of gas service expansion to new off-main customers;
155 or (3) both; provided, however, that natural gas distribution system expansion surcharges shall
156 not unreasonably burden existing customers. The department may establish guidelines pursuant
157 to this section that outline the department's methods and procedures for reviewing proposals,
158 including factors the department shall consider for program or policy approval.

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

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

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

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

178 SECTION 4. Notwithstanding any general or special law to the contrary, the department
179 of public utilities shall open an investigation into gas operator compliance with the directives set
180 forth in its Order D.T.E.\D.P.U. 06-48-A. The department shall complete its investigation and
181 submit its findings to the clerks of the house of representatives and the senate and the house and
182 senate chairs of the joint committee on telecommunications, utilities and energy on or before
183 June 1, 2015.

184 SECTION 5. Notwithstanding any general or special law to the contrary, each operator
185 shall give notice to the department of public utilities of each incident at the earliest practicable
186 moment following discovery of said incident, in such form as the department may require. As
187 used in this section, the terms “incident” and “operator” shall be defined as in 49 CFR section
188 191.3. The department of public utilities may open an investigation to determine the cause of
189 said incident. Within 30 days of notice of an incident under this section, the department of
190 public utilities shall post a notice on its website describing whether it will investigate said
191 incident. In the event the department determines not to investigate the incident, it shall set forth
192 in writing the reasons for its decision. Nothing in this section shall be construed to affect or
193 modify the authority of the department of public utilities under state or federal law.

194 SECTION 6. Notwithstanding any general or special law to the contrary, the secretary of
195 public safety and security or a designee shall issue a report on the adequacy of state regulations
196 governing the safety standards for utility transformer vaults located within buildings subject to
197 the state building code. The report shall include, but not be limited to, an analysis of the
198 standards for access, structural integrity, ventilation and lighting requirements of the regulations
199 and the inspection and enforcement requirements, if any, of the regulations. The report shall
200 further address structural limitations of older buildings containing utility transformer vaults, any
201 ancillary costs, including the cost of inspections and possible costs to businesses and
202 municipalities to comply with any proposed new regulations, and any recommendations for
203 legislation necessary to further implement minimum safety standards for utility transformer
204 vaults. Before the final report is issued, the secretary of public safety or a designee shall hold a

205 public hearing. The report, together with any proposed regulations or legislation necessary to
206 carry out the recommendations, shall be submitted to the clerks of the house of representatives
207 and the senate on or before November 15, 2014.

208 SECTION 7. Notwithstanding any general or special law to the contrary, explosive
209 material, as defined in 527 CMR 13.03, shall not be used to fire a blast in any blasting operation
210 at a site primarily used as a source of mined products from the earth if such site is within 500 feet
211 of a natural gas pipeline or metering and regulation station without written approval by the
212 department of public utilities.

213 SECTION 8. The department of public utilities shall investigate whether it shall require
214 the winter surveillance and patrol of cast iron gas pipelines in the commonwealth and shall
215 determine whether the presence of extended frost cap conditions may result in additional stress
216 on cast iron pipe segments, requiring enhanced surveillance and patrol. The department may
217 establish minimum uniform procedures for cast iron winter surveillance and patrols consistent
218 with any federally mandated standards for integrity management programs for distribution
219 pipelines. Gas companies, as defined in section 1 of chapter 164 of the General Laws, may
220 establish procedures that exceed any minimum standards, subject to applicable filing
221 requirements with the department.

222 SECTION 9. The department of public utilities shall issue a report addressing the
223 prevalence of gas leaks in the natural gas system. The report shall include, but not be limited to:
224 (i) the total number of Grade 1, Grade 2 and Grade 3 leaks as classified in section 144 of chapter
225 164 of the General Laws and reported in the previous year; (ii) estimates for lost and
226 unaccounted for natural gas and methane emissions as a result of such Grade 1, Grade 2 and
227 Grade 3 leaks; and (iii) time and cost estimates for eliminating the backlog of Grade 1, Grade 2
228 and Grade 3 leaks. The department shall issue the first report not later than 1 year after the
229 effective date of this act. The second and all subsequent reports shall be filed annually thereafter
230 until the department determines that the backlog has been sufficiently addressed and the natural
231 gas distribution system is in a state of good repair. The final annual report issued by the
232 department pursuant to this section shall estimate the total cost of eliminating the backlog and
233 the annual estimated cost to maintain a state of good repair. The second report and all
234 subsequent reports shall be filed with the house and senate chairs of the joint committee on
235 telecommunications, utilities and energy and the house and senate chairs of the joint committee
236 on public safety and homeland security on or before December 31 of each year.

237 SECTION 10. Section 145 of chapter 164 of the General Laws, added by section 2 of
238 this act, shall take effect on October 1, 2014.