HOUSE . . . . . No. 3564

By Representatives Turner of Dennis and Peake, a petition (subject to Joint Rule 12) (accompanied by bill, House, No. 3564) of Cleon H. Turner, Sarah K. Peake and Timothy R. Madden relative to vegetation control and no-spray agreements with municipalities and water districts. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to vegetation management .

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

Any public utility, state agency or authority that maintains a right-of-way through a municipality or through property under the control of a water district shall offer a no- spray agreement, with reasonable provisions, for the municipality or water district to consider if it desires. Any such agreement negotiated may include but is not limited to the responsibilities of the parties, the allocation of costs and the rights and remedies of the parties in the event of default and may apply to all or any part of the right-of-way within the municipality or over which a water district has authority. Any agreement reached under this section must be negotiated in good faith, written, and signed by all parties. As part of the no-spray agreement the municipality or water district may either perform the vegetation control work to standards as provided in the agreement or contract with the public utility or others to conduct the work.

If the municipality or water district and the entity seeking to control the vegetation are unable to come to an agreement regarding a no-spray approach to vegetation management within 60 days of beginning discussions, the disputed issues shall be decided by arbitration using an arbitrator mutually agreed to by the parties. If the parties are unable to agree to an arbitrator within 15 days, each party shall choose one arbitrator each and those selected arbitrators shall, within 15 days of being selected, agree upon a third arbitrator. The panel of three arbitrators shall then determine the disputed issues within 15 days from the date the third arbitrator agrees to participate. Nothing in this section shall prevent the parties form using an organization such as the American Arbitration Association or a similar entity.

If a reasonable no-spray agreement is offered to a municipality and an agreement is not reached within 90 days after the date of the offer, the public utility, at its own option may apply

22 pesticides, approved by the Massachusetts Department of Agriculture, in its right-of-way or use
23 other methods to control the vegetation. If the municipality or water district agrees to perform
24 vegetation control work but does not perform it by the agreed upon date or another date
25 reasonably negotiated as the result of weather or other unforeseen events causing delay, the
26 public utility, after 90 days written notice to the municipality or water district, at its own option
27 may apply approved herbicides in its right of way or use other methods to control the vegetation.

28 It is the intent of this section that an alternative right-of-way maintenance procedure
29 without the use of pesticides is made available to municipalities and water districts. This section
30 does not affect a municipality's right to enact by-laws or ordinances not the public utilities to
31 maintain its right-of-way clear of unwanted vegetation in the absence of a no-spray agreement.