

# HOUSE . . . . . No. 4942

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By Mr. Flaherty of Boston, petition of Michael F. Flaherty that provision be made for an excise on the use of intrastate telephone communication service. Taxation.

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## The Commonwealth of Massachusetts

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In the Year One Thousand Nine Hundred and Eighty-One.

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AN ACT PROVIDING FOR AN EXCISE ON THE USE OF INTRASTATE TELEPHONE COMMUNICATION SERVICE.

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

1 The General Laws are hereby amended by inserting after chapter  
2 64I the following chapter:

3 **CHAPTER 64M.**  
4 **TELEPHONE USERS EXCISE.**

5 *Section 1.* (a) Any city or town may by ordinance or by-law  
6 enacted in accordance with its charter impose an excise upon every  
7 person, other than a telephone corporation, using intrastate tele-  
8 phone communication services from other than a residence. The  
9 excise imposed by this section shall be at the rate of five percent of  
10 the charges made for such services, including minimum charges for  
11 such services. The excise imposed by this section shall be paid by  
12 the person paying for such services.

13 (b) As used in this section, the term "charges" shall not include  
14 charges for services paid for by inserting coins in coin-operated  
15 telephones except that where such coin-operated telephone service  
16 is furnished for a guaranteed amount, the amounts paid under such  
17 guarantee plus any fixed monthly or other periodic charge shall be  
18 included in the base for computing the amount of excise due; nor

19 shall the term "charges" include charges for any type of service or  
20 equipment furnished by a service supplier subject to Public Utility  
21 regulation during any period in which the same or similar services  
22 or equipment are also available for sale or lease from persons other  
23 than a service supplier subject to Public Utility regulation; nor  
24 shall the words "telephone communication services" include land  
25 mobile services or maritime mobile services as defined in Section  
26 2.1 of Title 47 of the Code of Federal Regulations, as said section  
27 existed on January 1, 1970. The term "telephone communication  
28 services" refers to that service which provides access to a telephone  
29 system and the privilege of telephonic quality communications  
30 with substantially all persons having telephone stations which are  
31 part of such telephone system. The Telephone Excise is intended  
32 to, and does, apply to all charges billed to a telephone having a  
33 non-residential situs in the city or town, irrespective of whether a  
34 particular telephone call originates and/or terminates within the  
35 city or town.

36 (c) The excise imposed by this section shall be collected from the  
37 service user by the person providing the intrastate telephone com-  
38 munication services. The amount of the excise collected in one  
39 month shall be remitted to the city or town treasurer on or before  
40 the last day of the following month.

41 (d) Notwithstanding the provisions of subsection (a), the excise  
42 imposed under this section shall not be imposed upon any person  
43 using intrastate telephone communication services to the extent  
44 that the amounts paid for such services are exempt from or not  
45 subject to the excise imposed under Section 4251 of Title 26 of the  
46 United States Code, as such section existed on the effective date  
47 hereof.

48 *Section 2.* (a) Every person receiving payment of charges from a  
49 service user shall collect the amount of excise imposed by this  
50 article from the service user.

51 (b) The excise shall be collected, insofar as practical, at the same  
52 time as and along with the collection of charges made in accord-  
53 ance with the regular billing practice of the service supplier.

54 (c) The duty to collect excise from a service user shall commence  
55 with the beginning of the first regular billing period applicable to  
56 that person which starts on or after the operative date of this act.

57 (d) Any excise required to be paid by a service user under the  
58 provisions of this article shall be deemed a debt owed by the service  
59 user to the city or town. Any such excise collected from a service  
60 user which has not been remitted to the tax collector shall be  
61 deemed a debt owed to the city or town by the person required to  
62 collect and remit. Any persons, business, corporation or other  
63 entity owing money to the city or town under provisions of the  
64 article shall be liable to the city or town in action brought in the  
65 name of the city or town for recovery of such amount.

66 *Section 3.* Each service supplier shall, on or before the last day  
67 of quarter, make a return to the tax collector, on forms provided by  
68 him and approved by Department of Public Utilities of the Com-  
69 monwealth, stating the amount of excise collected by the service  
70 supplier during the preceding quarter. At the time the return is  
71 filed, the full amount of the excise collected shall be remitted to the  
72 tax collector.

73 *Section 4.* Excises collected from a service user which are not  
74 remitted to the tax collector on or before the due dates provided in  
75 this article are delinquent. Interest and penalties for delinquency of  
76 any excise collected and not remitted shall be assessed as follows:

77 (a) Any service supplier who fails to remit any excise imposed  
78 by this article within ten (10) days after receipt of written notice  
79 from the tax collector of such failure shall pay a penalty of ten  
80 percent (10%) of the amount of the excise.

81 (b) In addition to the penalties imposed in subsection (a), any  
82 service supplier who fails to remit any excise imposed by this  
83 article, shall pay interest at the rate of one-half of one percent (1/2  
84 of 1%) per month, or fraction thereof, on the amount of the tax,  
85 exclusive of penalties, from the date on which the remittance first  
86 became delinquent until paid.

87 (c) No excise, penalty, or interest shall be deemed delinquent  
88 which has been appealed, or such bill upon which the excise,  
89 penalty, or interest has been imposed has been appealed to the  
90 Department of Public Utilities. Upon determination of the Depart-  
91 ment of Public Utilities that the bill and/or telephone excise is  
92 correct any excise, interest or penalty imposed on the service user  
93 shall be paid by the service supplier to the tax collector without the  
94 imposition of additional interest or penalty on the service supplier.



95     *Section 6.* Any appeal of the Telephone User's excise imposed  
96 by the article shall be brought by the service user in the same  
97 manner and under the same procedures as are implemented by the  
98 Department of Public Utilities pertaining to any other billing  
99 charges imposed by the service supplier.

100    *Section 7.* The tax collector may make administrative agree-  
101 ments with the service suppliers to vary the strict requirements of  
102 this article so that collection of any excise imposed herein may be  
103 made in accordance with the billing procedures of a particular  
104 service supplier so long as the overall agreement of said agreements  
105 results in collection of the excise in conformance with the general  
106 purpose and scope of this article. A copy of each such agreement  
107 shall be on file and available for public examination in the City  
108 Clerk's Office.

109    *Section 8.* Nothing contained in this article is intended to con-  
110 flict with the applicable rules, regulations and tariffs of any service  
111 supplier subject to jurisdiction of the Department of Utilities. In  
112 the event of any conflict, the provisions of said rules, regulations  
113 and tariffs shall control.

114    *Section 9.* The excise imposed by the provisions of this article  
115 are solely for the purpose of providing revenue for the usual  
116 current expenses of the city or town which accepts this article, the  
117 provisions of this article are not enacted for regulatory purposes.

118    *Section 10.* If any section, subsection, paragraph, sentence,  
119 clause or phrase of this article or any part thereof of any tax against  
120 any person specified herein is for any reason held to be unconstitu-  
121 tional, such decision shall not affect the validity of the remaining  
122 portions of this article or any part thereof.