HOUSE . . . . . No. 1348

By Mr. Linsky of Brookline, petition of Louis G. Pines, Martin A. Linsky, David S. Liederman and another for legislation to establish a right of action for citizens to bring judicial action in order to protect the natural resources of the Commonwealth. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT TO SECURE CITIZENS A RIGHT OF ACTION TO PROTECT THE NATURAL RESOURCES OF THE COMMONWEALTH.

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

1 Chapter 111 of the General Laws is hereby amended by
2 inserting after section 175 the following section: –
3 *Section 175A. (a)* As used in this section the following
4 words shall have the following meanings:
5 (1) "Damage to the environment" means any effect upon
6 any of the natural resources within the Commonwealth,
7 whether caused by the defendant alone or by the defendant
8 and others acting jointly or severally, which directly or in-
9 directly affects adversely persons, property or living things,
10 including but not limited to pollution or impairment of air,
11 water or land; noise or smell.
12 (2) "Person" means any individual, group of individuals,
13 association, corporation, company, business organization, trust,
14 estate, political subdivision, administrative agency, or any other
15 legal entity or its legal representatives, agents or assigns.
16 (3) "Prohibitive" cost of reducing or eliminating damage
17 to the environment is cost which would cause a reasonable man
18 to cease the action, activity, operations, or enterprise which
19 causes or is about to cause such damage to the environment.
20 *(b)* Any person shall have standing to maintain in superior
21 court a suit in equity against any person who is causing or is
22 about to cause damage to the environment.
23 (1) Upon finding that the defendant is causing or is about
24 to cause damage to the environment and that such damage to

25 the environment can be reduced or eliminated by means other
26 than cessation of the action, activity, operations, or enterprise
27 causing it, the court shall order defendant to cease and desist
28 from causing such damage to the environment, unless de-
29 fendant shall have proved by a clear preponderance of the
30 evidence that the cost of ceasing and desisting would be pro-
31 hibitive, in which event the court shall order defendant to
32 reduce the damage to the environment caused by it to the
33 extent, if any, beyond which the cost of further reduction
34 would be prohibitive.
35 In any order issued pursuant to this subsection, the court
36 shall allow the defendant as much time to reduce or eliminate
37 such damage to the environment to the extent ordered as
38 defendant shall prove is necessary to effect such reduction or
39 elimination; provided, however, that the defendant shall be
40 required to post a bond, in a sum deemed reasonable by the
41 court, that the defendant will provide proof to the court of
42 compliance with the order of the court.
43 (2) Upon finding that the defendant is causing or about
44 to cause damage to the environment and that such damage to
45 the environment cannot be reduced or eliminated or that the
46 cost of eliminating or substantially reducing such damage to
47 the environment would be prohibitive, the court shall issue an
48 injunction ordering the defendant to cease so much of de-
49 fendant's action, activity, operations or enterprise which causes
50 or is about to cause such damage to the environment, unless
51 the defendant proves, by a clear preponderance of the evi-
52 dence, that such damage to the environment does not con-
53 stitute a nuisance which equitably should be enjoined. In deter-
54 mining whether such damage to the environment constitutes a
55 nuisance which equitably should be enjoined, the court shall
56 consider, without excluding other relevant considerations, the
57 following: (a) the value to the public of the action, activity,
58 operations or enterprise causing or about to cause damage to
59 the environment; (b) the extent of the damage to the environ-
60 ment or the likelihood of damage to the environment and the
61 extent thereof caused by defendant's action, activity, opera-
62 tions or enterprise; (c) the number of people that are or will be
63 affected by such damage to the environment and the severity

of such effect; and (d) the value of the natural resources of the Commonwealth affected in terms of economics, aesthetics, recreation, health, safety and welfare.

(3) Upon finding that the defendant is causing damage to the environment and that the plaintiff has been damaged thereby after September 1, 1971, the court shall award damages to the plaintiff.

(4) Upon the issuance of an injunction or the awarding of damages under this section, the court shall award the plaintiff the reasonable fees and expenses of attorneys, expert witnesses and consultants, costs and other expenses reasonably incurred in connection with the prosecution of the suit.

(c) (1) Any person entitled to bring a suit under this section may, if the damage to the environment complained of has caused similar injury to other persons similarly situated and too numerous to join, and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the suit on behalf of himself and such other similarly injured and situated persons. The court shall require that notice of said suit be given to unnamed plaintiffs in the most effective practicable manner. Said suit shall not be dismissed, settled or compromised without the approval of the court, and notice of any proposed dismissal, settlement or compromise shall be given to all members of the class of plaintiffs in such manner as the court directs.

(2) Proof by the plaintiff of non-compliance with any statute or regulation, a direct effect of which is to prevent or minimize damage to the environment, shall constitute prima facie evidence that the defendant is causing or is about to cause damage to the environment.

(3) Proof by the defendant of compliance with any statute or regulation shall not constitute a complete defense to a suit under this section.

(4) Nothing in this section shall be interpreted to derogate from any existing or future common law of statutory right or remedy against damage to the environment or damage to any person.

(5) The provisions of this section are severable, and if any of its provisions shall be held by any court of competent jurisdiction to be invalid or unconstitutional, said holding shall not affect or impair any of the remaining provisions.