

HOUSE No. 6284

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, September 27, 1971.

The committee on Ways and Means, to whom was recommitted the Bill establishing a division of environmental affairs within the Department of the Attorney General and directing the filing of environmental impact reports (House, No. 5144); and to whom was referred the Bill establishing an environmental policy for the Commonwealth (House, No. 5948), report recommending that the accompanying bill (House, No. 6248) ought to pass.

For the committee,

GEORGE L. SACCO, JR.

The Commonwealth of Massachusetts

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

AN ACT ESTABLISHING A DIVISION OF ENVIRONMENTAL PROTECTION WITHIN THE DEPARTMENT OF THE ATTORNEY GENERAL, AND DIRECTING THE PREPARATION OF ENVIRONMENTAL IMPACT REPORTS.

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. Chapter 12 of the General Laws is hereby
2 amended by inserting after section 11B, the following section: —
3 *Section 11C.* As used in this section, “damage to the
4 environment” shall mean any destruction, damage or impair-
5 ment, actual or probable, to any of the natural resources in the
6 commonwealth, whether caused by any person acting alone or
7 acting jointly or severally. Damage to the environment shall
8 include, but not be limited to, air pollution, water pollution,
9 improper sewage disposal, pesticide pollution, excessive noise,
10 improper operation of dumping grounds, impairment and eutro-
11 phication of rivers, streams, flood plains, lakes, ponds or other
12 water resources, destruction of seashores, dunes, wetlands, open
13 spaces, natural areas, parks or historic districts or sites. Damage
14 to the environment shall not include any insignificant destruc-
15 tion, damage or impairment to such natural resources.

16 There shall be in the department of the attorney general a
17 division of environmental protection. The attorney general shall
18 designate an assistant attorney general as director of said division.
19 Said director may appoint and remove, subject to the approval of
20 the attorney general, such expert, clerical or other assistants as
21 the work of the division may require.

22 Notwithstanding the provision of any other law, the attorney
23 general shall have the authority to prevent or remedy damage to
24 the environment, at the request of an appropriate agency or on
25 his own initiative, by commencing or intervening in a proceeding
26 before an appropriate agency, department, board, commission,
27 division or authority, whether state or federal, and before any
28 political subdivision of the commonwealth, or by commencing or

29 intervening in any suit or action, civil or criminal, to enforce any
30 statute, ordinance or regulation or secure any common law right
31 or remedy including but not limited to the abatement of public
32 nuisances. Each agency, department, board, commission, division
33 and authority of the commonwealth or of any political subdivi-
34 sion thereof shall give written notice to the attorney general of
35 all adjudicatory proceedings or public hearings in which damage
36 to the environment is or may be at issue.

37 The attorney general shall receive and maintain appropriate
38 record of complaints from interested persons relating to damage
39 to the environment, and upon the receipt thereof shall refer the
40 same to an appropriate agency or subdivision of the common-
41 wealth for such further corrective action as may be necessary to
42 prevent or remedy damage to the environment.

43 The attorney general may investigate the administration of
44 environmental statutes, ordinances or regulations by an agency,
45 department, board, commission, division or authority of the
46 commonwealth or of any political subdivision thereof and may
47 make such recommendations as are appropriate to the Governor
48 and to the General Court.

49 Nothing in this section shall be interpreted to derogate from
50 any existing common law or statutory right or remedy against
51 damage to the environment.

52 The division shall make and submit an annual report of its
53 activities to the General Court.

1 SECTION 2. Chapter 30 of the General Laws is hereby
2 amended by inserting after section 60, added by chapter 203 of
3 the acts of 1968, the following sections: —

4 *Section 61.* All agencies, departments, boards, commissions,
5 and authorities of the commonwealth shall review, evaluate, and
6 determine the impact on the natural environment of all works,
7 projects, or activities conducted by them and shall use all
8 practicable means and measures to minimize damage to the
9 environment. Unless precluded by law, all statutes of the
10 commonwealth shall be interpreted and administered in accor-
11 dance with the policy set forth in the preceding sentence, and
12 any determination of public benefit, public convenience and
13 necessity or similar determination made by an agency of the
14 commonwealth shall include a finding describing the environ-

15 mental impact, if any, of the project and a finding that all
16 feasible measures have been taken to avoid or minimize said
17 impact.

18 *Section 62.* No agency, department, board, commission, or
19 authority of the commonwealth shall commence any major
20 work, project, or activity which may cause damage to the
21 environment until sixty days after it has published a final
22 environmental impact report in accordance with the provision of
23 this section or until sixty days after a public hearing on said
24 report, whichever date is the later; provided that research,
25 planning, and design and other preliminary work necessary to
26 describe and evaluate such project for the purposes of this
27 section may be undertaken.

28 An environmental impact report shall contain detailed state-
29 ments describing the nature and extent of the proposed work and
30 its environmental impact; all measures being utilized to minimize
31 environmental damage, any adverse short-term and long-term
32 environmental consequences which cannot be avoided should the
33 work be performed; and alternatives to the proposed action and
34 their environmental consequences. The preparation of said report
35 shall be commenced during the mutual planning and design phase
36 of any work, project, or activity subject to this section and the
37 report shall be so prepared and disseminated as to inform the
38 originating agency, reviewing agencies, the attorney general and
39 the public of the environmental consequences of major state
40 actions and the alternatives thereto prior to any major commit-
41 ment of state funds and prior to the commencement of the work,
42 project, or activity. In order to insure an interdisciplinary review,
43 the secretary of environmental affairs shall in conjunction with
44 any agency involved jointly approve the selection of any
45 consultant engaged to prepare the draft or final impact report.

46 As used in this and the preceding section, "damage to the
47 environment" shall mean any destruction, damage or impair-
48 ment, actual or probable, to any of the natural resources of the
49 commonwealth and shall include but not be limited to air
50 pollution, water pollution, improper sewage disposal, pesticide
51 pollution, excessive noise, improper operation of dumping
52 grounds, impairment and eutrophication of rivers, streams, flood
53 plains, lakes, ponds, or other surface or subsurface water
54 resources; destruction of seashores, dunes, wetlands, open spaces,

55 natural areas, parks, or historic districts or sites. Damage to the
56 environment shall not be construed to include any insignificant
57 damage to or impairment of such resources.

58 Each secretary shall promulgate after public hearing, rules and
59 regulations approved by the secretary of environmental affairs to
60 carry out the purposes of this section which shall be applicable to
61 all agencies, departments, boards, commissions, authorities or
62 instrumentalities within each respective executive department.
63 Said regulations shall define, insofar as is practicable, those types
64 of works, projects, or activities which shall be subject to the
65 provisions of this section; provided that the secretary of
66 environmental affairs may require that the procedures of this act
67 be followed with respect to any other work, project, or activity
68 if, in his judgment, an impact report is justified. Said regulations
69 shall establish procedures for the form, schedule, and production
70 of draft and final impact by the agency originating the project;
71 for the circulation of said draft reports to any state agency,
72 department, board, commission, division or authority which has
73 jurisdiction by law or special expertise with respect to any
74 environmental impact involved for written comment; for the
75 dissemination of the final impact report; for any public hearing,
76 to be conducted by the agency seeking to perform the work,
77 project or activity, which may be determined by the secretary of
78 environmental affairs to be appropriate; and for other matters
79 and procedures consistent with the National Environmental
80 Policy Act, Pub. Law 91-190, and amendments thereto. The
81 draft report, the final report, and all written comments required
82 by these regulations shall be public documents. Said reports shall
83 be submitted to the secretary of environmental affairs who shall
84 issue a written statement indicating whether or not in his
85 judgment said reports adequately and properly comply with the
86 criteria set forth in the second paragraph of this section.

87 For the purposes of carrying out the provisions of this section,
88 funds made available for the purpose of design of or planning or
89 performing said work, project, or activity shall be available and
90 may be expended for the research, preparation, and publication
91 of the reports required by this section and expenses incidental
92 thereto, and said funds may be transferred or otherwise may be
93 made available to other state departments and resource agencies
94 designated by the secretary of environmental affairs for the

95 purpose of meeting the expenses incurred in evaluating the draft
96 or final impact report.

1 SECTION 3. This act shall take effect on July first, nineteen
2 hundred and seventy-two.