

SENATE No. 1875

The Commonwealth of Massachusetts

SENATE, MAY 10, 1979.

The committee on Natural Resources and Agriculture, to whom was referred the petition (accompanied by bill, Senate, No. 967) of Carol C. Amick for legislation to authorize pollution control agencies to require the posting of performance bonds to guarantee compliance with certain orders, licenses and permits; the petition (accompanied by bill, House, No. 2040) of Barbara E. Gray that the Secretary of Environmental Affairs be authorized to levy civil penalties for violations of environmental protection laws, and the petition (accompanied by bill, House, No. 2042) of Barbara E. Gray that the Secretary of Environmental Affairs be authorized to levy penalties for certain violations of environmental protection laws, reports the accompanying new draft (Senate, No. 1875).

For the Committee,

CAROL C. AMICK

The Commonwealth of Massachusetts

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

AN ACT AUTHORIZING POLLUTION CONTROL AGENCIES TO REQUIRE THE POSTING OF PERFORMANCE BONDS TO GUARANTEE COMPLIANCE WITH CERTAIN ORDERS, LICENSES AND PERMITS.

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 21A of the General Laws is hereby
2 amended by adding after section 5 the following new section:—
3 All agencies, departments, boards, commissions and
4 authorities within the executive office of environmental
5 affairs are authorized to require the posting of a bond, with
6 surety, running to the commonwealth, and sufficient in the
7 opinion of the chief administrative official of such agency,
8 to secure faithful and satisfactory performance of work re-
9 quired by any final order, license, permit or other require-
10 ment of such agency for conformance with statutes and
11 regulations administered by such agency, in such sum and
12 upon such conditions as such agency may require. Other
13 evidence of financial responsibility which is satisfactory to
14 such agency may be accepted in lieu of bonding. Notwith-
15 standing the provisions of this section, the amount of such
16 bond shall not exceed the estimated cost of the work required
17 or the restoration of affected lands and property if the work
18 is not performed as required, whichever is the greater.
19 Damages may be recovered on any such bond at the suit of
20 the Attorney General in the Superior Court which shall have
21 jurisdiction to enforce the provisions of this section.

1 SECTION 2. Section 40 of Chapter 131 of the General Laws,
2 as most recently amended by chapter 818 of the acts of 1974,
3 is hereby further amended by inserting after the twelfth
4 paragraph of said section the following new paragraph:—
5 Whenever the conservation commission determines in
6 writing that good cause exists for the posting of financial
7 security to protect the interests in this section, and states the

8 grounds therefor in such writing, the conservation commis-
9 sion may require the posting of a bond, with surety running
10 to the municipality, and sufficient as to form and surety in
11 the opinion of town, counsel or city solicitor, to secure faith-
12 ful and satisfactory compliance with any final order of con-
13 ditions, in such sum and upon such conditions as the com-
14 mission may require. Other forms of security such as a
15 deposit of money or negotiable securities or other reasonable
16 evidence of financial responsibilities which is satisfactory to
17 the commission may be accepted in lieu of bonding. Notwith-
18 standing the provisions of this paragraph, the amount of such
19 bond or other security shall not exceed the estimated cost
20 of properly completing the work directly constituting the
21 removing, filling, dredging or altering subject to the com-
22 mission's order or the restoration of such of the affected
23 lands and property as are subject to the protective provisions
24 of this section if the work is not performed as required,
25 whichever is the greater:

26 The municipality shall recover damages on any such bond
27 by suit in the superior court.

28 The penal sum of any bond or the amount of any other
29 security may be reduced from time to time by the conserva-
30 tion commission, and the obligations of the parties thereto may
31 be released by said commission in whole or in part. Upon
32 completion of the work in accordance with the commission's
33 order, security for performance of which was given by the
34 bond or other security, the person subject to such order shall
35 send by registered mail to the conservation commission a
36 written statement that said work has been completed in ac-
37 cordance with said order. The commission shall within twenty-
38 one days from its receipt of such statement determine whether
39 the work has in fact been completed in accordance with the
40 commission's order, and if it determines that the work has
41 been so completed it shall forthwith release the interest of
42 the municipality in the bond or other security and return the
43 bond or other security to the person who furnished same. If
44 the commission determines that the work was not completed
45 in accordance with its order it shall within said twenty-one
46 day period send a notice by registered mail to the person sub-

47 ject to the order with a copy of the Department of Environ-
48 mental Quality Engineering detailing wherein the work is not
49 completed. Notwithstanding anything herein to the contrary,
50 if the statement of completion was accompanied by a certi-
51 fication of completion signed by a professional engineer,
52 architect, landscape architect or land surveyor registered in
53 the commonwealth, the commission's notice of failure to com-
54 plete the work must be signed by a similarly registered
55 engineer, architect, landscape architect, landscape architect
56 or land surveyor who attests that by personal inspection of
57 work site he has certified and confirmed the work deficiencies
58 listed therein. Upon failure of the commission to take required
59 action within said twenty-one day period, as evidenced either
60 by its release of the bond or other security or an appropriately
61 verified and confirmed notification of failure to complete the
62 work, all obligations under the bond shall automatically
63 terminate by operation of law and any deposit or other secur-
64 ity shall be immediately returned to the person who furnished
65 same.