

The Commonwealth of Massachusetts



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

MICHAEL S. DUKAKIS  
GOVERNOR

July 15, 1988

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislative proposal, entitled "An Act to Improve the Massachusetts Environmental Policy Act."

In the past few years, the importance of the Massachusetts Environmental Policy Act (MEPA) has grown considerably as competition for land use throughout the Commonwealth has necessitated a greater understanding of project consequences at both the state and local level. MEPA today shapes substantially over 500 public and private projects each year. MEPA ensures that significant land use decisions are made in a way that promotes economic development while respecting the natural and cultural environment and minimizing, as far as is practical, the negative effects of such decisions.

During the past few months, three areas of weakness have become evident in the MEPA process. First, we should afford the benefits of the MEPA process to local governments that wish to use it as they make their decisions, and not after the decisions have been made. Second, we must develop ways to preclude overly aggressive developers from proceeding with construction while the public review process is ongoing. Third, a recent Supreme Judicial Court ruling demonstrates the need to give citizens the legal standing to challenge the Secretary of Environmental Affairs on decisions affecting MEPA jurisdiction if we are to ensure public participation.

These three goals are achieved in the attached proposal. I respectfully urge your prompt consideration of this legislation.

Respectfully Submitted,

A large, stylized handwritten signature in dark ink, appearing to read "Michael S. Dukakis".

Michael S. Dukakis  
Governor

## The Commonwealth of Massachusetts

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

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### AN ACT TO IMPROVE THE MASSACHUSETTS ENVIRONMENTAL POLICY ACT.

*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. Section 62C of Chapter 30 of the General Laws  
2 is hereby amended by striking out the third paragraph and insert-  
3 ing in place thereof the following new paragraph: —

4 No agency shall commence a project or act on a permit or  
5 financial assistance application unless the secretary has deter-  
6 mined that no environmental impact report is required, or unless  
7 sixty days have elapsed following publication by the secretary of  
8 notice of availability of a final environmental impact report. No  
9 private person seeking an access permit, a wastewater discharge  
10 permit, a water supply permit, a permit affecting facility design  
11 or layout, transfer of land or financial assistance for a project shall  
12 commence a project unless the secretary has determined that no  
13 environmental impact report is required, or unless sixty days have  
14 elapsed following publication by the secretary of notice of  
15 availability of a final environmental impact report, or unless the  
16 secretary has made a written finding that such commencement  
17 does not foreclose mitigation options and does not lead to the  
18 potential for significant environmental damage.

1 SECTION 2. Section 62H of said chapter 30 is hereby  
2 amended by striking out the first sentence and inserting in place  
3 thereof the following two sentences:

4 An agency or a person aggrieved by the decision of the secre-  
5 tary under section sixty-two A as to whether an environmental  
6 impact report is required, or by the decision of the secretary under  
7 section sixty-two C as to whether a final environmental impact  
8 report complies with the provisions of sections sixty-two through  
9 sixty-two H, may seek judicial review by the superior court. An  
10 agency or person intending to commence an action or proceed-

11 ing alleging an improper determination of whether a project  
12 requires the preparation of an environmental impact report under  
13 section sixty-two A, shall first provide notice of intention to com-  
14 mence such action or proceeding within sixty days of issuance of  
15 notice of availability of such determination.

1 SECTION 3. Said section 62H is hereby further amended in  
2 line 19 by striking out the word "that" and inserting in place  
3 thereof the following words: as to whether.

1 SECTION 4. Said section is hereby further amended in line 51  
2 by striking out the words "sixty-two H" and inserting in place  
3 thereof the following words: sixty-two J.

1 SECTION 5. Said chapter 30 is hereby amended by inserting  
2 after section 62H the following two sections:

3 Section 62I. Upon application by the governing body of a city  
4 or town, the secretary may review, under the provisions of sec-  
5 tions 62 through 62H, a project that does not require agency action  
6 but that does require the issuance of a permit or other approval  
7 by the city or town. In order to accept such an application, the  
8 secretary must find that the project has the potential to cause  
9 damage to the environment, that the review is a practical measure  
10 to avoid or minimize such damage, that there is sufficient local  
11 authority over the project to assure implementation of measures  
12 to avoid or minimize such damage, that all relevant local boards  
13 and officials agree to be bound by the standards and procedures  
14 set for agencies in section 61 and sections 62 through 62H, and  
15 that the review will not cause undue hardship.

16 If the secretary accepts a project for review under the provisions  
17 of this section, the project shall be reviewed in the same way as  
18 are projects requiring agency action, provided that the scope of  
19 the review shall be limited to that part of the project which is  
20 within the subject matter jurisdiction of the city or town permit  
21 or other approval.

22 Section 62J. The attorney general may, upon the request of the  
23 secretary, bring action for injunctive relief against any person for  
24 violation of any provision of section 61 or sections 62 through  
25 62I or any provision of any regulation or determination issued

26 thereunder, and the superior court shall have jurisdiction to enjoin  
27 such violation and to grant such further relief as it may deem  
28 appropriate. Any person who violates any provision of section 61  
29 or sections 62 through 62I or any provision of any regulation or  
30 determination issued thereunder, shall be subject to a civil penalty  
31 not to exceed twenty-five thousand dollars per day for each such  
32 violation; provided, however, that each day such violation occurs  
33 or continues shall constitute a separate offense. The superior court  
34 shall have jurisdiction to enforce the provisions of this section.