

HOUSE No. 5536

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, February 27, 1975.

The committee on Bills in the Third Reading, to whom was referred the Bill further regulating certain activities in mountain regions of Berkshire County (House, No. 5498), report recommending that the same be amended by the substitution of the accompanying bill (House, No. 5536).

For the committee,

JOHN E. MURPHY, Jr.

The Commonwealth of Massachusetts

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

AN ACT FURTHER REGULATING CERTAIN ACTIVITIES IN MOUNTAIN REGIONS OF BERKSHIRE COUNTY.

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 131 of the General Laws is hereby amended by striking
2 out section 39A, inserted by section 1 of chapter 842 of the acts of
3 1974, and inserting in place thereof the following section: —

4 *Section 39A.* A city or town in the county of Berkshire which
5 accepts the provisions of this section shall designate its
6 conservation commission, or, if having none, the board of
7 selectmen in a town or the mayor in a city, to carry out the
8 provisions of this section. The designated agency shall adopt
9 reasonable rules and regulations relative to the mountain regions
10 situated within the territorial limits of such city or town to protect
11 watershed resources and preserve the natural scenic qualities of
12 such mountain regions.

13 The term "applicant" as used in this section shall mean the
14 person giving notice of intention to remove, fill, excavate, or
15 alter.

16 The term "base elevation" as used in this section shall mean the
17 mean elevation of the watershed in which the activity is proposed.
18 The mean elevation shall be determined relative to the portion of
19 the watershed which is situated in said county by taking the
20 highest and lowest elevation in each city and town within the
21 watershed and finding the average of these elevations.

22 The base elevation for each of the watersheds in said county
23 shall be as follows:

24 Farmington River watershed	1,500 feet above mean sea level
25 Housatonic River watershed	1,500 feet above mean sea level
26 Westfield River watershed	1,600 feet above mean sea level
27 Deerfield River watershed	1,700 feet above mean sea level
28 Hudson River watershed	1,700 feet above mean sea level

29 The term "hearing authority" as used in this section shall mean
30 the conservation commission, or if none, the board of selectmen
31 in a town, or the mayor of a city in which an activity subject to the
32 provision of this section is proposed.

33 The term "mountain regions" as used in this section shall mean
34 those highland areas within the city or town which are subject to
35 the provisions of this section.

36 The term "person" as used in this section shall include any
37 individual, group of individuals, association, partnership,
38 corporation, company, business organization, trust, estate, the
39 commonwealth or political subdivision thereof, administrative
40 agency, public or quasi-public corporation or body, or any other
41 legal entity or its legal representative, agents or assigns.

42 The hearing authority shall draft proposed boundaries for
43 mountain regions. The mountain regions shall generally be those
44 areas within the city or town which have an elevation greater than
45 the base elevation as defined in this section.

46 If the hearing authority determines that the regulation of
47 certain areas which have elevations lower than the base elevation
48 is necessary to accomplish the purposes of this section, the
49 hearing authority may include those areas in the proposed
50 mountain regions. If the hearing authority finds that regulation of
51 certain areas above the base elevation would not accomplish the
52 purposes of this section, the hearing authority may exempt those
53 areas from the proposed mountain regions.

54 The hearing authority shall submit a map or text delineating
55 proposed boundaries to the city council or town meeting and to
56 the planning board and the board of health, and the state
57 department of natural resources. After submission of the report,
58 the city council or town meeting may adopt, by a two-thirds vote,
59 reject, or amend and adopt final boundaries of the mountain
60 regions.

61 The hearing authority shall submit a map or text delineating
62 the final boundaries of mountain regions to the commissioner.

63 The boundaries of mountain regions may be amended,
64 changed, or repealed by a two-thirds vote of all the members of
65 the city council in a city or by a two-thirds vote of the town
66 meeting in a town.

67 Upon written request of any person, the hearing authority shall
68 within twenty-one days make a written determination as to
69 whether this section is applicable to any land or work thereon.

70 Where such a person is other than the owner, notice of any such
71 determination shall be sent to the owner.

72 Any person who proposes to remove, fill, excavate, or alter any
73 land situated within the mountain regions shall file written notice
74 of his intention to so remove, fill, excavate, or alter, including
75 such plans as may be necessary to describe such proposed activity
76 and its effect on the environment, and shall receive and comply
77 with an order of conditions as provided in this section.

78 The notice required by this section shall be sent by certified
79 mail to the hearing authority of the city or town in which the
80 activity is proposed. Each notice shall be accompanied by a filing
81 fee of twenty-five dollars payable to the city or town. Copies of
82 such notice shall be sent at the same time by certified mail to the
83 department. No such notice shall be sent before all permits,
84 variances, and approvals required by by-law or ordinance with
85 respect to the proposed activity have been filed. Upon receipt of
86 any notice the department shall designate a file number for such
87 notice and shall send a notification of such number to the person
88 giving notice and to the hearing authority to whom the notice was
89 given. Said notification shall state the name of the owner of the
90 land upon which the proposed work is to be done and the
91 location of said land.

92 Upon receipt of the notice of intention the hearing authority
93 shall make a preliminary determination of the potential
94 environmental impact of the proposed activity. If the hearing
95 authority finds that the activity will not affect public or private
96 water supply, or cause erosion, pollution or flooding, or destroy
97 the natural scenic qualities of the mountain regions by changing
98 topographic features or destroying substantial amounts of
99 vegetation, the hearing authority shall issue a written order which
100 states that finding. The order shall be signed and published as
101 provided in this section. The hearing authority shall rescind an
102 order issued after a preliminary determination and hold a public
103 hearing on the proposed activity if the applicant, or any owner of
104 land abutting the land upon which the proposed activity would be
105 done, or any ten residents of the city or town where the land is
106 located, or the commissioner requests a hearing within ten days of
107 the issuance of the order. If a hearing is not requested within ten
108 days after the issuance of the order, the applicant may commence
109 the activity.

110 If the hearing authority determines that the proposed activity
111 may adversely affect watershed resources or the natural scenic
112 qualities of the mountain regions by changing topographic
113 features or removing substantial amounts of vegetation the
114 hearing authority shall hold a public hearing on the proposed
115 activity within twenty-one days after receipt of said notice. Notice
116 of the time and place of the hearing shall be given by the hearing
117 authority at the expense of the applicant, not less than five days
118 prior to such hearing, by publication in a newspaper of general
119 circulation in the city or town where the activity is proposed and
120 by mailing of the published notice to the applicant and to the
121 board of health and the planning board of said city or town and
122 to the department.

123 Within twenty-one days after the hearing, the hearing authority
124 shall issue a written order which may impose conditions on the
125 proposed activity to protect public or private water supply, to
126 protect the ground water supply, to prevent pollution and
127 erosion, to control flooding, and to preserve the natural scenic
128 qualities of the mountain regions. The activity shall be done in
129 accordance with such order. If the hearing authority determines
130 that the proposed activity will not noticeably affect such interests
131 or that the applicant has taken adequate measures to protect such
132 interests, the order shall so state. The order shall be signed by a
133 majority of the conservation commission, a majority of the
134 selectmen, or by the mayor, as the case may be, and a copy
135 thereof shall be sent forthwith to the applicant and to the
136 department. At the same time, a copy of the order shall be
137 published in a newspaper of general circulation in the city or town
138 where the activity is proposed.

139 Upon issuance of an order, the applicant or any person
140 aggrieved by the order, or any owner of land abutting the land
141 upon which the proposed activity would be done, or any ten
142 residents of the city or town where such land is located, or the
143 commissioner may request the department to determine if
144 conditions should be imposed on the proposed activity to protect
145 public or private water supply, to protect ground water supply, to
146 prevent pollution and erosion, to control flooding, and to
147 preserve the natural scenic qualities of the mountain regions.
148 Such request may also be submitted if the hearing authority fails

149 to hold a hearing within twenty-one days after receipt of the
150 notice of intention, or if the hearing authority holds a hearing but
151 fails to issue an order within twenty-one days after the hearing.
152 The request shall be sent to the department by certified mail
153 within ten days after the hearing authority has acted or failed to
154 act. At the same time, the party making the request shall send
155 copies thereof by certified mail to the hearing authority and, if the
156 party is not the applicant, to the applicant. Within thirty days
157 after the receipt of the request, the department shall notify the
158 applicant if his application is not in the proper form or is lacking
159 information or documentation necessary to make the determina-
160 tion. Within seventy days after receipt of such request, the
161 department shall make the determination requested and shall
162 issue a written order, signed by the commissioner, imposing
163 conditions to protect the interests described herein. Such order
164 shall supersede the prior order of the hearing authority and all
165 work shall be done in accordance therewith. A copy of the order
166 shall be sent to the applicant, to the hearing authority, to the
167 department of public works, and the party who requested the
168 order if not the applicant. At the same time, a copy of the order
169 shall be published in a newspaper of general circulation in the city
170 or town where the activity is proposed.

171 Any person aggrieved by an order of the department issued
172 under the provisions of this section may appeal under the
173 provisions of chapter thirty A. Such right of appeal shall be
174 exclusive.

175 No activity in any mountain region shall be undertaken until
176 the final order with respect to such work has been recorded in the
177 registry of deeds for the district in which the land is located. Upon
178 completion of the activity in compliance with the order, the
179 applicant may obtain a certificate of compliance from the agency
180 which issued the order. The applicant may record that certificate
181 in the registry of deeds for the district in which the land is located.

182 Any person who purchases or otherwise acquires land upon
183 which an activity has been done in violation of the provisions of
184 this section or in violation of an order issued under this section
185 shall forthwith comply with the order or restore the land to its
186 condition prior to any violation.

187 If an applicant fails to undertake the proposed activity within
188 one year following the date of issuance of an order, such inaction
189 shall constitute an abandonment of the project and the order shall
190 be considered expired. The applicant may request an extension of
191 the order prior to the expiration of the one-year period from the
192 agency which issued the order. Said agency, in its discretion, may
193 grant two extensions of the order for a period no longer than one
194 year.

195 The agency which issued the order may suspend or revoke the
196 order if it finds that the applicant has not complied with the
197 conditions set forth in the order, or that the applicant has
198 exceeded the scope of activity as set forth in the application. Such
199 a finding shall be made only after giving notice to the applicant of
200 the facts or conduct which warrant the intended action, and after
201 a hearing at which the applicant is given an opportunity to show
202 compliance with the conditions of the order.

203 The hearing authority, its agents, officers, and employees, the
204 commissioner, his agents and employees, may enter upon
205 privately owned land for the purpose of carrying out the
206 provisions of this section.

207 Any court having equity jurisdiction may restrain a violation of
208 this section and enter such orders as it deems necessary to remedy
209 such violation, upon the petition of the attorney general, the
210 commissioner, a city or town, an owner or occupant of property
211 which may be affected by removal, filling, excavation, or altering,
212 or ten residents of the commonwealth under the provisions of
213 section ten A of chapter two hundred and fourteen.

214 Whoever violates any provision of this section shall be
215 punished by a fine of not more than one thousand dollars or by
216 imprisonment for not more than six months or both. Each day or
217 portion thereof of continuing violation shall constitute a separate
218 offense. This section may be enforced by natural resources
219 officers or deputy natural resources officers.

220 The provisions of this section shall not apply to owners of land
221 who propose to cut forest products on land devoted to forest
222 purposes and who have complied with the provisions of sections
223 forty to forty-six, inclusive, of chapter one hundred and thirty-
224 two.

225 This section shall not apply to any activity which is subject to
226 the provisions of section forty, any activity conducted in
227 connection with the construction or maintenance of any facility,
228 as that term is defined in section sixty-nine G of chapter one
229 hundred and sixty-four, to any activity conducted in connection
230 with the construction or maintenance of any electrical, transmis-
231 sion or distribution facilities or facilities used in the transmission
232 of intelligence by electricity or by telephone or otherwise for
233 which locations in the public ways have been approved by the
234 selectmen or aldermen under the provisions of section twenty-two
235 of chapter one hundred and sixty-six, or to the construction or
236 maintenance of any electric distribution facilities required to
237 serve a building or structure whose construction has been
238 approved by the local conservation commission.