

By Mr. Angelo of Saugus, petition of Steven Angelo, Robert A. Durand and Pamela P. Resor for legislation to further protect the wetlands of the Commonwealth. Natural Resources and Agriculture.

**The Commonwealth of Massachusetts**

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

AN ACT FURTHER PROTECTING THE WETLANDS 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 SECTION 1. Section 61 of Chapter 30 of the General Laws is  
2 hereby amended by inserting after the third sentence of the first  
3 paragraph the following: —

4 Such determination shall include a finding that there is no prac-  
5 ticable alternative to the proposed project with less adverse effects  
6 on the resource areas. Such determination shall include finding  
7 that all feasible measures have been taken to minimize any  
8 unavoidable adverse effects to such resource areas and that all  
9 feasible measures have been taken to compensate for those  
10 adverse effects which, once minimized, cannot be avoided.

1 SECTION 2. Section 62 of Chapter 30 of the General Laws is  
2 hereby amended by inserting, where appropriate, the following  
3 definitions: —

4 “Adverse effect:, means 1) a greater than negligible change in  
5 the resource area or one of its characteristics or, 2) other factors  
6 that diminish the value of the resource area to one or more of the  
7 specific interests identified in section 40, chapter 131.

8 “Practicable alternative”, means a measure that is available and  
9 compatible with the basic purpose of the project and capable of  
10 being done after taking into consideration a cost benefit analysis  
11 of the alternative, existing technology, and logistics in light of  
12 overall protect purposes. Practicable alternatives may include an  
13 area not presently owned by the applicant which could reasonably

14 be obtained, utilized, expanded, or managed in order to fulfill the  
15 basic purpose of the proposed activity, unless the activity is one  
16 where the basic project purpose, as defined by the promulgation  
17 of regulation by the department of environmental protection, can  
18 only be fulfilled within the municipality where the project is pro-  
19 posed. Said practicable alternative shall be limited to those avail-  
20 able and capable of being done on sites within the municipality  
21 where the project is proposed.

22 “Resource Area” shall have the meaning given to it by  
23 M.G.L.A. section 40, chapter 131, except that such term shall not  
24 include land subject to flooding or land subject to coastal storm  
25 flowage except for those areas upon or within such land which are  
26 significant to the protection of wildlife habitat.

27 “Water dependent”, means those uses and facilities which  
28 require direct access to, or location in, marine, tidal or inland  
29 waters and which therefore cannot be located away from those  
30 waters.

1 SECTION 3. Section 40 of Chapter 131 of the General Laws is  
2 hereby amended by inserting the following paragraphs before the  
3 first paragraph: —

4 This section shall be interpreted and administered so as to pre-  
5 vent the loss of resource areas of the commonwealth by pre-  
6 serving and protecting the acreage and functions of resource areas  
7 identified in this section.

8 This section shall also be interpreted and administered so as to  
9 increase the acreage and improve the functions of resource areas  
10 of the commonwealth. Conservation commissions and the depart-  
11 ment of environmental protection shall require or allow restora-  
12 tion of degraded resource areas and, where appropriate, the  
13 creation of new resource areas.

1 SECTION 4. Section 40 of Chapter 131 of the General Laws is  
2 hereby further amended by inserting the following four para-  
3 graphs after the fourteenth paragraph: —

4 No order shall be issued pursuant to paragraphs seventeen  
5 through twenty of this section for the removal, filling, dredging,  
6 or altering of any resource area if there is a practicable alternative  
7 to the proposed activity which involves less adverse effect to the



8 resource area. The applicant shall have the burden of demon-  
9 strating to the satisfaction of the issuing authority that no practi-  
10 cable alternative exists to the proposed activity. For non-water  
11 dependent projects, the issuing authority shall presume the exist-  
12 tence of a practicable alternative with less adverse effect to any  
13 resource area. This presumption may be overcome only by clear  
14 and convincing evidence that no practicable alternative exists.  
15 Forms of compensatory mitigation, such as restoration or replica-  
16 tion of resource areas shall not be considered in evaluating the  
17 impact of an alternative to resource areas.

18 In any case where the practicable alternatives include sites  
19 located outside a single municipality, the applicant shall submit to  
20 the department of environmental protection a final determination  
21 of applicability and other information the department deems nec-  
22 essary to determine whether practicable alternatives to the pro-  
23 posed activity exist. The department shall issue, within forty-five  
24 days of submittal of the information a report to the applicant and  
25 the conservation commission stating its conclusion whether prac-  
26 ticable alternatives to the proposed activity exist and the reasons  
27 for its conclusion. The department's conclusion shall be presumed  
28 correct unless clear and convincing evidence to the contrary is  
29 provided to the commission.

30 Notwithstanding the provisions set forth in the preceding two  
31 paragraphs, the issuing authority may allow an activity for which  
32 there is no practicable alternative, provided that:

33 1) no order of conditions shall be issued for the removal,  
34 filling, dredging or altering of any resource area unless the appli-  
35 cant demonstrates, to the satisfaction of the issuing authority, that  
36 all feasible measures have been taken to minimize otherwise  
37 unavoidable adverse effects to the resource area; and

38 2) no order of conditions shall be issued for the removal,  
39 filling, dredging, or altering of any resource area unless the appli-  
40 cant demonstrates, to the satisfaction of the issuing authority, that  
41 those adverse effects which, once minimized, cannot be avoided,  
42 shall be mitigated through the restoration or replication of the  
43 resource area where applicable and possible in terms of acreage,  
44 on at least a 1:1 basis, and in terms of function, to the maximum  
45 extent possible as determined by the conservation commission.

46 The issuing authority shall impose such conditions on the  
47 activity as are necessary to ensure that unavoidable adverse  
48 effects to resource areas are minimized, and to ensure that com-  
49 pensatory mitigation measures shall be successfully completed by  
50 the applicant.

1 SECTION 5. Section 40 of Chapter 131 of the General Laws is  
2 hereby further amended by inserting before the fifth paragraph,  
3 the following definition: —

4 “Adverse effect” as used in this section shall mean 1) a greater  
5 than negligible change in the resource area or one of its character-  
6 istics or, 2) other factors that diminish the value of the resource  
7 area to one or more of the specific interests of the Act, as deter-  
8 mined by the issuing authority.

1 SECTION 6. Section 40 of Chapter 131 of the General Laws is  
2 hereby further amended by inserting, before the eighth paragraph,  
3 the following definitions: —

4 “Practicable alternative”, means a measure that is available and  
5 compatible with the basic project purpose and capable of being  
6 done after taking into consideration a cost benefit analysis of the  
7 alternative, existing technology, and logistics in light of overall  
8 project purposes. Practicable alternatives may include an area not  
9 presently owned by the applicant which could reasonably be  
10 obtained, utilized, expanded, or managed in order to fulfill the  
11 basic purpose of the proposed activity, unless the activity is one  
12 where the basic project purpose can only be fulfilled within the  
13 municipality where the project is proposed. Said practicable alter-  
14 native shall be limited to those available and capable of being  
15 done on sites within the municipality where the project is pro-  
16 posed.

17 “Resource area” as used in this section shall mean any bank,  
18 freshwater wetland, coastal wetland, beach, dune, flat, marsh or  
19 swamp which borders on any ocean, estuary, creek, river, stream,  
20 pond or lake; land under any of the water bodies listed in this defi-  
21 nition; land subject to tidal action; land subject to coastal storm  
22 flowage; or land subject to flooding, except that for the purposes  
23 of paragraphs twenty-one and twenty-two of this section, the term  
24 shall not include land subject to flooding or land subject to coastal



25 storm flowage except for those areas upon and within such land  
26 which are significant to the protection of wildlife habitat.

1 SECTION 7. Section 40 of Chapter 131 of the General Laws is  
2 hereby further amended by inserting, before the ninth paragraph,  
3 the following definition:

4 "Water dependent", means those uses and facilities which  
5 require direct access to, or location in, marine, tidal or inland  
6 waters and which therefore cannot be located away from those  
7 waters.

1 SECTION 8. Section 40 of Chapter 131 of the General Laws is  
2 hereby further amended by deleting from the first sentences of  
3 both the twentieth and the twenty-first paragraphs the word "first"  
4 and substituting in its place the word "third".

1 SECTION 9. This act shall not apply to any activity for which,  
2 pursuant to M.G.L.A., section 40, chapter 131, a Notice of Intent  
3 has been filed, prior to the effective date of this act, with the con-  
4 servation commission or, if none, with the board of selectmen in  
5 the town or the mayor of the city in which the proposed activity is  
6 to be located.

1 SECTION 10. Section 40 of Chapter 131 of the General Laws  
2 is hereby further amended by inserting, before the eighteenth  
3 paragraph, the following: —

4 All proposed work shall comply with water quality standards  
5 promulgated pursuant to sections 26-53, chapter 21.

1 SECTION 11. The department of environmental protection  
2 shall promulgate regulations and a fee schedule necessary to  
3 implement this section. The commissioner of the department shall  
4 appoint representatives to a technical advisory group to consist of  
5 at least seven (7) persons to advise and assist the department in  
6 the promulgation of the regulations. The technical advisory group  
7 shall include, but not be limited to, representatives of the  
8 following organizations: The Massachusetts Association of  
9 Conservation Commissions, The National Association of  
10 Industrial Office Parks, The Environmental Lobby of

11 Massachusetts, The Massachusetts Home Builders Association,  
12 The Farm Bureau, The Audubon Society, and The Cape Cod  
13 Cranberry Growers Association.

1 SECTION 12. This act shall take effect January 1, 1996.



