

By Ms. Amick of Bedford, petition of Carol C. Amick that pollution control agencies be authorized to require the posting of performance bonds to guarantee compliance with certain orders, licenses and permits. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

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

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 affairs
5 are authorized to require the posting of a bond, with surety,
6 running to the commonwealth, and sufficient in the opinion of
7 the chief administrative official of such agency, to secure faithful
8 and satisfactory performance of work required by any final order,
9 license, permit or other requirement of such agency for
10 conformance with statutes and regulations administered by such
11 agency, in such sum and upon such conditions as such agency
12 may require. Other evidence of financial responsibility which is
13 satisfactory to such agency may be accepted in lieu of bonding.
14 Notwithstanding the provisions of this section, the amount of
15 such bond shall not exceed the estimated cost of the work
16 required or the restoration of affected lands and property if the
17 work is not performed as required, whichever is the greater.
18 Forfeiture of any such bond shall be recoverable at the suit of the
19 attorney general in the superior court, which shall have
20 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, is

3 hereby further amended by inserting after the twelfth paragraph
4 of said section the following new paragraph:—

5 Whenever the conservation commission determines in writing
6 that good cause exists for the posting of financial security to
7 protect the interests stated in this section, and states the grounds
8 therefor in such writing, the conservation commission may
9 require the posting of a bond, with surety running to the
10 municipality, and sufficient as to form and surety in the opinion
11 of town counsel or city solicitor, to secure faithful and
12 satisfactory compliance with any final order of conditions, in
13 such sum and upon such conditions as the commission may
14 require. Other forms of security such as a deposit of money or
15 negotiable securities or other reasonable evidence of financial
16 responsibility which is satisfactory to the commission may be
17 accepted in lieu of bonding. Notwithstanding the provisions of
18 this paragraph, the amount of such bond or other security shall
19 not exceed the estimated cost of properly completing the work
20 directly constituting the removing, filling, dredging or altering
21 subject to the commission's order or the restoration of such of the
22 affected lands and property as are subject to the protective
23 provisions of this section if the work is not performed as required,
24 whichever is the greater: forfeiture of any such bond shall be
25 recoverable at the suit of the municipality in the superior court.

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

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

