HOUSE . . . . No. 5525

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, February 24, 1977.

The Committee on Natural Resources and Agriculture, to whom were referred the petition (accompanied by bill, House, No. 708) of Richard J. Dwinell and William L. Saltonstall relative to establishing a system of scenic and recreational rivers and streams in the Commonwealth; and the petition (accompanied by bill, House, No. 1106) of Barbara E. Gray that cities and towns be authorized to designate scenic rivers, streams and ponds, accompanying bill (House, No. 5525) report recommending that the bill ought to pass.

For the committee,

RICHARD J. DWINELL.

The Commonwealth of Massachusetts

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

AN ACT ESTABLISHING A SYSTEM OF SCENIC AND RECREATIONAL RIVERS
AND STREAMS IN 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 17B of Chapter 21 of the General Laws,
2 as inserted by Chapter 840 of the Acts of 1971 is hereby further
3 amended by striking out said section and inserting in place
4 thereof the following: —
5   *Section 17B.* The Commissioner of environmental manage-
6 ment, with the approval of the board of environmental
7 management, shall establish a system of scenic and recreational
8 rivers and streams in the Commonwealth. Such rivers and
9 streams and their immediate environments, possessing outstand-
10 ing scenic, recreational, geologic, fish and wildlife, historic,
11 cultural, or other similar values, shall be preserved in free-flowing
12 condition, and they and their immediate environments shall be
13 protected for the benefit and enjoyment of present and future
14 generations.
15   Every wild, scenic or recreational river in its free-flowing
16 condition, or upon restoration to this, shall be considered eligible
17 for inclusion in the state wild and scenic rivers system and, if
18 included, shall be classified, designated, and administered as one
19 of the following:
20   (1) Wild river areas — Those rivers or sections of rivers that
21 are free to impoundments and generally inaccessible except by
22 trail, with watersheds or shorelines essentially primitive and
23 waters unpolluted.
24   (2) Scenic river areas—Those rivers or sections of rivers that
25 are free of impoundments, with shorelines or watersheds still
26 largely undeveloped, but accessible in places by roads.
27   (3) Recreational rivers areas—Those rivers or sections of
28 rivers that are readily accessible by road or railroad, that may

29 have some developments along their shorelines and that may have
30 undergone some impoundment or diversion in the past.

1   SECTION 2. The commissioner of environmental manage-
2 ment in consultation with the secretary of transportation and
3 construction shall study and submit at the beginning of each
4 legislative session, to the General Court proposals for the
5 establishment of a state system, and any additions thereto, of
6 scenic and recreational rivers and streams. The commissioner in
7 the preparation of said report, shall request from each city or
8 town through which said rivers or streams run, to appoint three
9 residents of each such city or town to advise him in the
10 preparation of his report and subsequently to advise him on any
11 proposed orders applying to said rivers and streams. The
12 commissioner or his designee shall hold hearings on the proposed
13 plan in each part of the state where rivers are being considered for
14 addition to the state system. If no rivers are being considered for
15 possible addition, the commissioner or his designee shall hold at
16 least two hearings in different parts of the state to solicit views of
17 concerned parties in rivers and streams of interest. Each such
18 study and plan shall be coordinated with any water resources
19 planning involving the same river being conducted by the Water
20 Resources Commission.

21   Each proposal shall be accompanied by a report, including
22 maps and illustrations, showing the area included within the
23 proposal; the characteristics which make the area a worthy
24 addition to the system; the current status of land ownership and
25 use in the area; as determined by the most recent records of the
26 assessors of the municipality, the reasonably foreseeable potential
27 uses of the land and water which would be enhanced, foreclosed,
28 or curtailed if the area were included in the system of scenic and
29 recreational rivers and streams of the Commonwealth.

30   The Commissioner of Environmental Management with the
31 approval of the board of environmental management, may from
32 time to time, for the purpose of promoting the public safety,
33 health and welfare and protecting public and private property,
34 wildlife, fresh water fisheries and irreplaceable wild, scenic and
35 recreational river resources, adopt, amend, modify or repeal

36 orders regulating, restricting or prohibiting dredging, filling
37 removing or otherwise altering, or polluting the scenic and
38 recreational rivers and streams of the Commonwealth. The notice
39 required by section two of chapter thirty A as a condition
40 precedent to the adoption or amendment of any regulation shall
41 be given to each assessed owner of any land on the banks of any
42 such river or stream. In this section, the term "scenic and
43 recreational rivers and streams of the Commonwealth" shall
44 mean rivers and streams of the Commonwealth or portions
45 thereof, and such contiguous land not to exceed one hundred
46 yards on either side of the natural bank of such river as the
47 commissioner reasonably deems it necessary to protect by any
48 such order.
49   Upon adoption of any such order or any order amending,
50 modifying or appealing the same, the commissioner shall cause a
51 copy thereof, together with a plan of the river or stream or
52 portion thereof affected and a list of the assessed owners of such
53 lands to be recorded in the registry of deeds for the county
54 wherein said river or stream is located and shall mail a copy of
55 such order and plan to each assessed owner of such lands affected
56 thereby. Such order shall not be subject to the provisions of
57 chapter one hundred and eighty-four. Any person who violates
58 any such order shall be punished by a fine of not less than ten
59 dollars nor more than one hundred dollars, or by imprisonment
60 for not more than six months, or both.
61   The superior court shall have jurisdiction in equity to restrain
62 violations of such orders.
63   Any person having a recorded interest in land affected by any
64 such order may, within ninety days after receiving notice thereof,
65 petition the superior court to determine whether such order
66 unreasonably restricts the use of his property as to deprive him of
67 the practical uses thereof and which constitutes an unreasonable
68 exercise of the police power so as to become the equivalent of a
69 taking without compensation. If the court finds the order to be
70 unreasonable, the court shall enter a finding that such order shall
71 not apply to the land of the petitioner; provided, however, that
72 such finding shall not affect any other land than that of the
73 petitioner. The commissioner shall cause a copy of such findings

74 to be recorded forthwith in the proper registry of deeds or, if the
75 land is registered, in the registry district of the land court. The
76 method provided in this paragraph for the determination of the
77 issue of whether any such order constitutes a taking without
78 compensation shall be exclusive, and such issue shall not be
79 determined in any other proceeding nor shall any person have a
80 right to petition for the assessment of damages under chapter
81 seventy-nine by reason of the adoption of any such order.

82   The department may, after a finding has been entered that such
83 order shall not apply to certain land as provided in the preceding
84 paragraph, take the fee or any lesser interest in such land in the
85 name of the commonwealth by eminent domain under the
86 provisions of chapter seventy-nine and hold the same for the
87 purposes set forth in this section.

88   No action by the commissioner or the department under this
89 section shall prohibit, restrict or impair the exercise or
90 performance of the powers and duties conferred or imposed by
91 law on the department of environmental quality engineering, the
92 state reclamation board of any mosquito control or other project
93 operating under or authorized by chapter two hundred and fifty-
94 two. No order adopted under the provisions of this section shall
95 be deemed to invalidate any order imposed thereto by the
96 department of environmental management pursuant to section
97 twenty-seven A of chapter one hundred and thirty or of section
98 forty, forty A or one hundred and five of chapter one hundred
99 and thirty-one.

100   Cost incurred under this section including, but not limited to
101 the acquisition of lands or interest therein, awards of damages
102 surveying and mapping, the preparation of designation plans,
103 printing of reports, conducting of public hearings and expenses
104 incidental thereto may be paid in accordance with the provisions
105 of section seventeen of chapter twenty-one.