

By Mr. Scaccia of Boston, petition of Angelo M. Scaccia for legislation to protect the rivers of the Commonwealth. Natural Resources and Agriculture.

## The Commonwealth of Massachusetts

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

### AN ACT RELATIVE TO THE PROTECTION OF RIVERS.

*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. The General Laws are hereby amended by  
2 inserting after chapter one hundred and thirty-one the following  
3 chapter; chapter one hundred and thirty-one A.

4 Section 1. a) The purposes of this act are to further the  
5 maintenance of safe and healthful conditions; to provide for the  
6 wise utilization of water and related land resources within an  
7 ecological context; to prevent and control water pollution,  
8 especially from nonpoint sources; to reduce erosion and  
9 sedimentation; to protect property values; to protect fish  
10 spawning grounds, aquatic life, bird and other wildlife habitat;  
11 to guide the placement of structures away from locations where  
12 there is a significant risk of damage due to flooding or erosion;  
13 to protect archaeological and historic resources; to enhance the  
14 positive functions of rivers as natural amenities in urban areas;  
15 to maintain natural vegetative cover along riverbanks while  
16 allowing reasonable visual and physical access to rivers; to  
17 promote scenic beauty and open space protection and to ensure  
18 that any development permitted within river corridors is designed,  
19 constructed and maintained in an environmentally sound manner.

20 b) It shall be the policy of the commonwealth to protect the  
21 natural integrity of its rivers, tributaries and adjacent lands. In  
22 furtherance of this policy, the commonwealth shall encourage and  
23 support the establishment of a system of protected, connected

24 open space lands along every river where feasible. In addition,  
25 the state shall promote the retention and restoration of naturally  
26 occurring flow patterns and volumes of water in rivers and their  
27 hydrologically connected systems. The state shall also encourage  
28 and support measures to reduce water pollution in order to satisfy  
29 or exceed federal clean water laws and standards. All public and  
30 private programs and actions affecting rivers shall be consistent  
31 with this policy.

32 Section 2. For the purpose of this chapter, the subsequent  
33 terms are defined as follows:

34 "Bank," the portion of the land surface which normally abuts  
35 and confines a river, occurring between a river and a vegetated  
36 bordering wetland, floodplain or upland, the upper boundary of  
37 which is the first observable break in the slope or the mean annual  
38 flood level, whichever is lower, and the lower boundary of which  
39 is the mean annual low flow level.

40 "Clearing," the removal of more than one-half the cumulative  
41 total of basal area of all live trees five inches or more in diameter  
42 breast height during any ten year period, or the removal of more  
43 than one-half of the total vegetative cover within the portion of  
44 each parcel that is within the riverfront area.

45 "Commission," the water resources commission.

46 "Densely developed areas," any area of ten acres or more that,  
47 as of the effective date of this act, is being utilized for intensive  
48 industrial, commercial or residential activities or combinations of  
49 such activities, including, but not limited to: manufacturing,  
50 fabricating, wholesaling, warehousing or other commercial or  
51 industrial activities; retail trade and service activities; residential  
52 dwelling units at a density of three or more per two acres; and  
53 mixed or combined patterns of the above. Land which is merely  
54 zoned or subdivided for intensive use, but is not being utilized  
55 for such use as of the effective date of this act, shall not be  
56 considered a densely developed area for the purposes of this act.

57 "Nonconforming use," any excavation, structure, road,  
58 clearing, driveway, landscaping, septic system, or expansion of  
59 structures, within the riverfront area for which all necessary  
60 permits have been granted as of the effective date of this act.

61 "Normal high-water line," the line, located within a river bank,  
62 that is apparent from visible markings, changes in the character

63 of soils or vegetation due to the prolonged presence of water and  
64 which distinguishes between predominantly aquatic and  
65 predominantly terrestrial land.

66 "River," the rivers and perennial streams listed in a document  
67 entitled "Massachusetts River Classification Program, Part I:  
68 Inventory of Rivers & Streams," prepared by the Department of  
69 Fisheries, Wildlife & Environmental Law Enforcement and the  
70 Department of Environmental Quality Engineering (July 1982),  
71 or as modified pursuant to chapter thirty A.

72 "Riverfront area," that area of land situated between a river's  
73 normal high-water line and a parallel line located one hundred  
74 and fifty feet (or a greater distance as established by a particular  
75 city or town) away (measured outward horizontally) from the  
76 river's normal high-water line, or the one hundred year floodplain  
77 contour (as may be determined on a map prepared for each city  
78 and town by the Federal Emergency Management Agency, or  
79 other reliable source), whichever is wider.

80 "Secretary," means the secretary of the executive office of  
81 environmental affairs or such agencies or programs that the  
82 secretary shall designate to carry out the provisions of this chapter.

83 "Structure," anything built for the support, shelter or enclosure  
84 of persons, animals, goods, waste, or property of any kind,  
85 together with anything constructed or erected with a fixed location  
86 on or in the ground, but exclusive of utility lines, fences and  
87 structures less than two hundred cubic feet in volume, provided  
88 that there shall be no volume exception for containers of waste,  
89 manure, pesticides, toxic substances, herbicides, fertilizer or salt.

90 "Utility lines," pipes, wires, cables and other conduits that are  
91 part of a collection, distribution or communication system and  
92 are designed for the transport of various matter, including but not  
93 limited to the following: electricity, telecommunication,  
94 petroleum and other toxic materials, natural gas, stormwater and  
95 wastewater.

96 "Vegetated buffer strip," a strip of fifty feet or wider, measured  
97 horizontally outward from a river's normal highwater line, which  
98 is composed of a relatively undisturbed stand of trees, shrubs and  
99 other vegetation, from which no more than one-half the  
100 cumulative total of basal area of all live trees five inches or more  
101 in diameter breast height are removed during any ten-year period.

102 Section 3. (a) The construction, creation, placement or  
103 installation of any structure, road, clearing, driveway, septic tank  
104 or leach field, underground storage tank, solid waste, excavation  
105 or fill exceeding ten cubic yards, substantial expansion of an  
106 existing structure shall be prohibited from the riverfront area;  
107 provided, however, that a local permit granting authority may  
108 grant a variance from this prohibition, subject to the provisions  
109 of section ten of chapter forty A and only upon due consideration  
110 of any regulation and guidelines developed under subsection (b)  
111 of this section; provided further that a city or town may permit  
112 without variance a substantial expansion of an existing structure  
113 located within the riverfront area if such expansion is not within  
114 the riverfront area. Cities and towns may also permit without  
115 variance the substantial expansion of nonconforming municipal  
116 or regional wastewater treatment plants within the riverfront area.  
117 Utility lines carrying wastewater, stormwater, petroleum or other  
118 toxic materials shall be set back at least twenty-five feet  
119 horizontally outward from a river's normal high-water line. River  
120 crossings by roads, driveways and utility lines are not prohibited  
121 by this subsection, but such crossings shall nevertheless remain  
122 subject to the Wetland Protection Act and all other applicable  
123 laws and regulations as well as the other provisions of this chapter,  
124 including the regulations and guidelines developed under  
125 subsection (b) of this section.

126 Nonconforming uses that exist prior to the effective date of this  
127 act are exempt from this subsection; provided, however, that  
128 expansion of a nonconforming use shall be subject to the  
129 provisions of this chapter. There shall also be an exemption from  
130 this subsection for activities within the riverfront area which are  
131 consistent with standards and policies of the department of  
132 fisheries, wildlife and environmental law enforcement and are  
133 designed to improve fisheries or wildlife habitat. The construction  
134 and maintenance of facilities for public water supply, public access  
135 to rivers and public boat launching are exempt from this  
136 subsection but otherwise remain subject to this chapter, including  
137 the regulations and guidelines developed under subsection (b) of  
138 this section. The use or implementation by the commonwealth or  
139 any political subdivision thereof of engineering techniques and  
140 devices necessary for the purposes of bank stabilization, flood or

141 erosion control or improvement of navigation shall be exempt  
142 from this subsection, piers, docks, wharves and other similar  
143 structures which may be located completely or partially within the  
144 riverfront area are exempt from this subsection but remain subject  
145 to any applicable local ordinances or bylaws promulgated under  
146 section four of this chapter or otherwise as well as any applicable  
147 provisions of chapter ninety-one. Normal maintenance or  
148 improvement of land in agricultural use shall be exempt from the  
149 provisions of this subsection provided that said maintenance or  
150 improvement occurs more than twenty-five feet from the normal  
151 high-water line. This subsection shall not apply to the portion of  
152 any river and adjacent land that is covered by a protective order  
153 pursuant to section seventeen B of chapter twenty-one.  
154 Notwithstanding any of the above, river banks should be retained  
155 in a naturally vegetated and relatively undisturbed condition  
156 wherever possible.

157 (b) Pursuant to chapter thirty A, and within one year of the  
158 effective date of this chapter, the commission shall adopt such  
159 regulations as are deemed necessary to carry out the purpose of  
160 this chapter. These regulations shall include criteria for the  
161 issuance of permits and variances under section three (a) and for  
162 determining violations under section five. The commission may  
163 also develop guidelines addressing suggested minimum standards  
164 for municipal zoning, land use controls and other mechanisms  
165 designed to carry out the purposes of this chapter. These  
166 guidelines may include: provisions governing building and  
167 structure size, setback and location; the establishment of vegetated  
168 buffer strips; the location and mapping of riverfront areas; the  
169 establishment of densely developed area districts and other  
170 districts; and prevention of the direct discharge of untreated  
171 stormwater into rivers. The secretary is further directed to review  
172 and recommend modifications to programs and activities of the  
173 commonwealth as they affect the protection afforded by this  
174 chapter.

175 (c) Cities and towns are hereby authorized to adopt ordinances  
176 or by-laws, consistent with this chapter and with section nine C  
177 of chapter forty A. Cities and towns may, with the Secretary's  
178 prior approval, define a riverfront area of less than one hundred  
179 and fifty feet for the portions of riverfront areas that qualify as

180 densely developed areas; provided, however, that no city or town  
181 shall establish a riverfront area of less than twenty-five feet. Local  
182 modifications to the size of the riverfront area shall be consistent  
183 with the regulations and guidelines developed under section  
184 three (b) and locally adopted master plans, harbor plans,  
185 greenway plans, water resources management plans and open  
186 space and recreation plans, if any.

187 Section 4. Nothing in this chapter shall be construed to  
188 supersede the provisions of chapter ninety-one and regulations  
189 promulgated thereunder. Subject to the provisions of chapter  
190 ninety-one, the jurisdiction of municipal riverfront area  
191 protection ordinances or bylaws which carry out the purposes of  
192 this chapter in whole or part may include any structure built on,  
193 over or abutting a dock, wharf, pier or other structure extending  
194 below the normal high-water line of a water body or within any  
195 wetland. In accordance with this jurisdiction, cities and towns may  
196 enact ordinances and bylaws affecting structures which extend  
197 over the water or are placed on lands lying between high and low  
198 watermarks or within wetlands.

199 Section 5. (a) Any person who willfully or negligently orders  
200 or conducts activity in violation of any provision of this chapter  
201 shall be punished by a fine of not less than two thousand five  
202 hundred dollars nor more than twenty-five thousand dollars per  
203 day of violation, or by imprisonment for not more than one year,  
204 or both. Any person receiving a subsequent conviction shall be  
205 punished by a fine of not less than five thousand dollars nor more  
206 than fifty thousand dollars per day of violation, or by  
207 imprisonment for not more than two years, or both.

208 (b) Any person who orders or conducts any activity in violation  
209 of this chapter shall be subject to a civil penalty of not less than  
210 five hundred dollars nor more than twenty-five thousand dollars  
211 per day nor more than twenty-five thousand dollars per day of  
212 violation.

213 (c) In addition or as an alternative to (a) or (b) of this section,  
214 any person who orders or conducts any activity in violation of  
215 this chapter may be ordered to restore the affected riverfront area  
216 to its prior or an improved condition.

217 (d) Fines and penalties assessed under this chapter shall accrue  
218 to each city or town in which the violation occurred. In a legal

219 action in which the pleadings challenge the validity or legality of  
220 this chapter or any ordinance or bylaw adoption hereunder, the  
221 Attorney General shall be made a party until removed by the  
222 Attorney General's consent. No action may be commenced under  
223 this section if the Attorney General has commenced and is  
224 diligently pursuing a civil action to enforce the provisions of this  
225 chapter.

226 Section 6. The commonwealth, any governmental subdivisions  
227 of the commonwealth, any ten citizens or a nonprofit conservation  
228 organization may bring an action for injunctive relief or civil  
229 penalties to enforce any provision of this chapter. Any party who  
230 brings an action under this section and is determined by the court  
231 to be the prevailing or substantially prevailing party may be  
232 awarded costs and reasonable attorney and expert witness fees.  
233 The superior court shall have jurisdiction to enforce the provisions  
234 of this chapter.

235 Section 7. Actions and prosecution under this chapter shall,  
236 unless otherwise expressly provided, be commenced within two  
237 years after the time when the offense was committed or discovered,  
238 whichever is later.

1 SECTION 2. Chapter forty A of the General Laws is hereby  
2 amended by inserting after section nine B the following new  
3 section: —

4 Section 9C. Cities and towns may adopt zoning ordinances or  
5 bylaws for the purpose of river and stream protection that are  
6 consistent with the provisions of chapter one hundred thirty-  
7 one A. The location of any zoning districts created by such  
8 ordinances or bylaws shall be shown on a zoning map pursuant  
9 to section four. Cities and towns are hereby authorized to illustrate  
10 on their zoning maps the location of any riverfront area as defined  
11 by chapter one hundred and thirty-one A.

The first part of the history of the  
island of Jamaica, from the  
discovery of it by Christopher Columbus  
in 1494, to the year 1655, when it was  
conquered by the English, is contained  
in the first volume of this work.

The second part, which is the  
subject of this volume, is the  
history of the island from the year  
1655 to the present time, and is  
divided into three periods, the first  
of which is the reign of Charles II.

The second period is the reign of  
James II, and the third is the  
reign of George I. The history of  
the island during the reign of  
Charles II, is the most interesting  
part of the work, and is the  
subject of this volume.

The history of the island during  
the reign of James II, is the  
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the reign of George I, is the  
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and is the subject of this volume.

The history of the island during  
the reign of George IV, is the  
most interesting part of the work,  
and is the subject of this volume.  
The history of the island during  
the reign of George V, is the  
most interesting part of the work,  
and is the subject of this volume.