

By Messrs. Gillette of Pembroke and Lynch of Barnstable, petition of Robert W. Gillette and Thomas K. Lynch relative to clarifying the duties of the Commissioner of Environmental Management relative to scenic and recreational rivers and streams in the Commonwealth. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT CLARIFYING THE DUTIES OF THE COMMISSIONER OF ENVIRONMENTAL MANAGEMENT RELATIVE TO 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 Chapter 21 of the General Laws, as most recently amended by
2 Section 66 of Chapter 706 of the acts of 1975, is hereby amended by
3 striking out Section 17B and inserting in place thereof the follow-
4 ing section: —

5 *Section 17B.* The commissioner of environmental management
6 with the approval of the board of environmental management,
7 shall establish a system of natural, scenic and recreational rivers
8 and streams in the commonwealth. Such rivers and streams and
9 their immediate environments, possessing outstanding wild,
10 scenic, recreational, geologic, fish and wildlife, historic, cultural,
11 or other similar or irreplaceable resources, shall be preserved, and
12 they and their immediate environments shall be protected for the
13 benefit and enjoyment of present and future generations.

14 Each river or stream within the system shall be classified,
15 designated and administered as one of the following: —

16 Natural Rivers — those rivers or streams which are free of
17 impoundments, generally inaccessible except by trail, with both
18 shorelines and vistas from the river free of development or human
19 alteration. Said rivers and streams should be examples of
20 Massachusetts river ecosystems in their natural state.

21 Scenic Rivers — those rivers or streams of high scenic quality

22 which are accessible in places by road or railroad with both
23 shorelines and vistas from the river relatively free of development
24 or human alteration. Said river or stream should have one or more
25 scenic, cultural or unique natural features which qualify it as an
26 outstanding scenic resource of the commonwealth.

27 Recreational Rivers — those rivers or streams of high scenic
28 quality which are readily accessible by road or railroad. Said river
29 or stream may have undergone diversion or impoundment and its
30 shorelines may be developed.

31 If no rivers or streams are being considered for inclusion in the
32 system, the commissioner or his designee shall hold at least two
33 hearings per year in different parts of the commonwealth to solicit
34 the views of interested persons as to the nomination of rivers and
35 streams for designation.

36 The commissioner of environmental management, with the
37 approval of the board of environmental management, may from
38 time to time, for the purpose of promoting the public safety, health
39 and welfare and protecting public and private property, outstand-
40 ing wild, scenic, recreational, geological, fish and wildlife,
41 historic, cultural or other similar irreplaceable resources, adopt,
42 amend, modify or repeal orders regulating, restricting, or
43 prohibiting dredging, filling, removing, or otherwise altering, or
44 polluting the scenic and recreational rivers and streams of the
45 commonwealth. Such orders may set forth activities and uses
46 which are prohibited, allowed or permitted by special permit. The
47 commissioner, with the approval of said board, may also provide
48 for the regulation, restriction, or prohibition of the recreational
49 and other uses of the waters of said rivers and streams. The
50 department may post signs indicating such regulation and restric-
51 tion at reasonable intervals along the banks of said rivers and
52 streams. The notice required by section two of chapter thirty A of
53 the General Laws as a condition precedent to the adoption or
54 amendment of any regulation shall be given to each assessed owner
55 of any land on the banks of any such river or stream.

56 In this section, the term "natural, scenic and recreational rivers
57 and streams of the commonwealth" shall mean rivers and streams
58 of the commonwealth and portions thereof, and such contiguous

59 land not to exceed ninety meters on either side of the natural bank
60 of such river as the commissioner reasonably deems it necessary to
61 protect by any such order. The "natural bank" of the river shall be
62 defined as the mean annual high water line. In wetland areas where
63 it is difficult to determine the mean annual high water line, the
64 "natural bank" shall be defined as the landward edge of the salt or
65 fresh water marsh, as defined in section forty of chapter one-
66 hundred and thirty-one of the General Laws.

67 The commissioner may prepare a management plan for any such
68 river or stream or portion thereof and land affected. Said manage-
69 ment plan shall include the characteristics which make the area a
70 worthy addition to the system, the status of land ownership and use
71 in the area; recreational facilities available on the river, and how
72 the designation affects other ongoing state programs on the river.

73 Within 60 days after the adoption of any such order or any order
74 amending, modifying, or repealing the same, the commissioner
75 shall cause a copy thereof, together with a plan of the river or
76 stream or portion thereof and lands affected and a list of the
77 assessed owners of such lands to be recorded in the registry of
78 deeds for each county wherein said river or stream is located, shall
79 mail a copy of such order and plan by certified mail to each
80 assessed owner of such lands affected thereby, and shall cause
81 notice of such order to be published twice in a paper of general
82 circulation in each town in which land affected by such order is
83 located. For the purposes of this section, the person to whom the
84 land was assessed in the last preceding annual tax levy shall be
85 deemed to be the assessed owner thereof, and the notice shall be
86 addressed in the same manner as the notice of such tax levy unless a
87 different owner or a different address is known by the com-
88 missioner to be the correct one in which case the notice shall be so
89 addressed.

90 The superior court shall have jurisdiction to restrain violations
91 of such order. Violation of such order shall be punished by a fine of
92 not less than ten dollars nor more than one hundred dollars, or by
93 imprisonment for not more than six months or both.

94 Any person having an interest in land affected by any such order,
95 may, within ninety (90) days after receiving notice thereof, petition

96 the superior court to determine whether such order unreasonably
97 restricts the use of his property as to deprive him of the practical
98 uses thereof and which constitutes an unreasonable exercise of the
99 police powers so as to become the equivalent of a taking without
100 compensation.

101 If the court finds the order to be unreasonable, the court shall
102 enter a finding that such order shall not apply to the land of the
103 petitioner; provided, however, that such finding shall not affect
104 any other land other than that of the petitioner. The commissioner
105 shall cause a copy of such findings to be recorded forthwith in the
106 proper registry of deeds or, if the land is registered, in the registry
107 district of the land court. The method provided in this paragraph
108 for the determination of the issue of whether any such order
109 constitutes a taking without compensation shall be exclusive, and
110 such issue shall not be determined in any other proceeding nor
111 shall any person have a right to petition for the assessment of
112 damages under chapter seventy-nine by reason of the adoption of
113 any such order.

114 The department may, after a finding has been entered that such
115 order shall not apply to certain land as provided in the preceding
116 paragraph, take the fee or any lesser interest in such land in the
117 name of the commonwealth by eminent domain under the
118 provisions of said chapter seventy-nine of the General Laws and
119 hold the same for the purposes set forth in this section.

120 No action by the commissioner or the department under this
121 section shall prohibit, restrict or impair the exercise or perfor-
122 mance of the powers and duties conferred or imposed by law on the
123 department of environmental quality engineering, the state
124 reclamation board or any mosquito control or other project
125 operating under or authorized by chapter two hundred and fifty-
126 two of the General Laws. No order adopted under the provisions of
127 this section shall be deemed to invalidate any order imposed prior
128 thereto by the department of environmental management pur-
129 suant to section one hundred and five of chapter one hundred and
130 thirty or of section forty A of chapter one hundred and thirty-one
131 of the General Laws.

132 Costs incurred under this section including, but not limited to
133 the acquisition of lands or interest therein, awards of damages;
134 surveying and mapping, the preparation of designation plans,
135 printing of reports, conducting of public hearings and expenses
136 incidental thereto may be paid out of funds made available to the
137 purpose of section three of chapter one hundred and thirty-two A.

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