

By Mr. Angelo of Saugus, petition of Steven Angelo and Joseph B. McIntyre for legislation to provide for the further protection of natural resources in the Commonwealth. Natural Resources and Agriculture.

**The Commonwealth of Massachusetts**

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

AN ACT FURTHER PROTECTING RESOURCES 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. Chapter 40A of the General Laws is hereby  
2 amended by inserting after Section 9B the following new  
3 section: —

4 Section 9C. (a) As used in this section, the following words  
5 shall have the following meanings: —

6 “Capital improvements plan,” a master plan as developed by  
7 a planning board established in any city or town under section 81A  
8 of chapter 41 of the General Laws which is used to make decisions  
9 relevant to the long-term physical development of a city or town  
10 and which identifies capital improvements or facility expansions  
11 pursuant to which impact fees may be assessed.

12 “Capital improvement,” shall include water supply, treatment,  
13 and distribution facilities and systems; wastewater collection and  
14 treatment facilities and systems; and roadway facilities and  
15 systems owned and operated by or on behalf of a city or town  
16 or the commonwealth.

17 “Facility expansion,” the expansion of the capacity of an  
18 existing facility which serves the same function as an otherwise  
19 necessary new capital improvement, in order that the existing  
20 facility may serve new development.

21 “Facility expansion” shall not include the maintenance,  
22 modernization, repair, or expansion of an existing facility to  
23 better serve existing development.

24 "Impact fee," a charge or assessment imposed by a city, town,  
25 or the commonwealth against new development in order to  
26 generate revenue for funding or recouping the costs of capital  
27 improvements or facility expansions necessitated by and  
28 attributable to such new development. An impact fee shall not  
29 include the following: dedication of rights-of-way or easements,  
30 or construction or dedication of on-site water distribution,  
31 wastewater collection, or drainage facilities, or streets, sidewalks,  
32 or curbs when such dedications and construction are required by  
33 valid ordinances and bylaws and are necessitated by and  
34 attributable to the new development; or lot or acreage fees to be  
35 placed in trust funds for the purpose of reimbursing-developers  
36 for oversizing or constructing water or sewer mains or lines. An  
37 impact fee may include the dedication of land for parks and open  
38 space or payment in lieu thereof to serve park and open space  
39 needs.

40 "New development," shall encompass any residential,  
41 commercial, or industrial activity which increases the number of  
42 service units, including the subdivision of land; the construction,  
43 reconstruction, redevelopment, conversion, structural alteration,  
44 relocation, or enlargement of any structure; or any use or  
45 extension of use of the land.

46 "Service unit," a standardized measure of consumption, use,  
47 generation, or discharge attributable to an individual unit of  
48 development calculated in accordance with generally accepted  
49 engineering or planning standards for a particular category of  
50 capital improvements or facility expansions.

51 "Rational nexus," the relationship between the impact of a new  
52 development and the necessity to make allowable public facility  
53 capital improvements because of that impact.

54 (b) Zoning ordinances or bylaws may allow a city or town  
55 which has developed a capital improvements plan to assess an  
56 impact fee on any new development within its borders. Such an  
57 impact fee may be assessed only to pay the proportional share  
58 of the costs of constructing capital improvements or facility  
59 expansions, provided that such capital improvements or facility  
60 expansions have a rational nexus to the proposed development.  
61 The fee shall be based on a capital improvements plan which has  
62 been developed pursuant to section 81D of chapter 41 of the

63 General Laws and which has been adopted or updated within the  
64 last five years. In the instance where the capital improvement to  
65 be undertaken or the facility or system to be expanded is owned,  
66 operated or maintained by the commonwealth, the common-  
67 wealth shall assess an impact fee to pay the proportional share  
68 of the cost of the capital improvement or the facility or system  
69 expansion.

70 (c) After assessment of the impact fees attributable to the new  
71 development or execution of an agreement for payment of impact  
72 fees, no additional impact fees or increases thereof shall be  
73 assessed against such new development for any reason, unless the  
74 number of service units to be developed within such new  
75 development increases. In the event of the increase in the number  
76 of service units, the impact fees to be imposed shall be limited  
77 to the amount attributable to the additional service units.

78 (d) A zoning ordinance or bylaw that provides for the assessing  
79 of an impact fee shall apply as a condition of the approval of a  
80 subdivision definitive plan or a building permit for a parcel of land  
81 which has not required subdivision approval. No activity at a new  
82 development shall commence until the impact fee has been paid.

83 (e) Impact fees collected by a city or town shall be placed into  
84 a separate account designated by the city or town for the specific  
85 capital improvement or facility expansion for which the fees were  
86 assessed and collected. The collected fees are to be expended for  
87 the sole purpose of funding that capital improvement or facility  
88 expansion which benefits the new development on which the fee  
89 was assessed. Such expenditure by a city or town may occur  
90 without appropriation. The city or town treasurer shall file an  
91 annual report with the Executive Office of Environmental Affairs  
92 and the Executive Office of Communities and Development  
93 detailing all impact fees assessed, collected, and expended for the  
94 fiscal year.

95 (f) Impact fees shall not be used to pay for any of the following:

- 96 [1] the construction, acquisition, or expansion of public  
97 facilities or assets other than capital improvements or facility  
98 expansions identified in the capital improvements plan;  
99 [2] the repair, operation, or maintenance of existing or new  
100 capital improvements or facility expansions;  
101 [3] the upgrading, updating, expanding, or replacing of

102 existing capital improvements to serve existing development in  
103 order to meet stricter safety, efficiency, environmental, or  
104 regulatory standards;

105 [4] the upgrading, updating, expanding, or replacing of  
106 existing capital improvements to provide better service to existing  
107 development;

108 [5] the administrative operating costs of the city or town;

109 [6] principal payments and interest or other finance charges on  
110 bonds or other indebtedness held by a municipality, except those  
111 bonds, notes, or other obligations issued by or on behalf of the  
112 municipality to finance the capital improvements or facility  
113 expansions identified in the capital improvements plan which  
114 result from the new development.

115 (g) Collected impact fees which are not expended or  
116 encumbered for the specific capital improvement or facility  
117 expansion within five years of the payment date shall be refunded  
118 with accrued interest to the feepayer or successor in interest.

119 (h) Any new development for which an impact fee has been  
120 paid shall be entitled to the permanent use and benefit of the  
121 services for which the fee was exacted and shall be entitled to  
122 receive immediate service from any existing facilities with actual  
123 capacity to serve the new service units, subject to compliance with  
124 other valid regulations.

125 (i) In accordance with section 17 of this chapter, a developer  
126 of a new development may dispute the amount of the impact fee  
127 assessed by a city or town by appealing to the superior court  
128 department in which the land concerned is situated, or to the land  
129 court department, or to the division of the district court  
130 department within whose jurisdiction the land is situated. The  
131 complaint shall allege that the amount of the assessed fee exceeds  
132 the proportional share of the capital improvement or facility  
133 expansion which has a rational nexus to the proposed new  
134 development and shall contain a prayer that the fee shall be  
135 reduced to an amount that is the actual proportional share of such  
136 costs.

1 SECTION 2. Chapter 41 of the General Laws is hereby  
2 amended by striking section 81D and inserting in place thereof  
3 the following: —

4 Section 81D. (a) A planning board established in any city or  
5 town under the provisions of Section 81A of this chapter may  
6 make a capital improvement plan of such city or town and from  
7 time to time may extend or perfect such plan. Such plan shall be  
8 utilized to describe through maps, texts, and illustrations the basis  
9 for decision making regarding the long-term physical develop-  
10 ment of the city or town. Such plan shall contain specific  
11 enumeration of the following items:

12 [1] a statement identifying the goals and policies of the  
13 municipality for its growth and development;

14 [2] a description of the existing capital improvements within  
15 the municipality and the costs to upgrade, update, improve,  
16 expand, or replace such improvements to meet existing needs and  
17 usage and stricter safety, efficiency, environmental, or regulatory  
18 standards;

19 [3] an analysis of the total capacity, the level of current usage,  
20 and commitments for usage of capacity of the existing capital  
21 improvements;

22 [4] a description of all or the portions of the capital  
23 improvements or facility expansions and their costs necessitated  
24 by and attributable to new development in the municipality based  
25 on the approved land use assumptions;

26 [5] a definitive table establishing the specific level or quantity  
27 of use, consumption, generation, or discharge of a service unit for  
28 each category of capital improvements or facility expansions and  
29 an equivalency or conversion table establishing the ratio of a  
30 service unit to various types of land uses, including but not limited  
31 to residential, commercial, and industrial;

32 [6] the total number of projected service units necessitated by  
33 and attributable to new development within the service area based  
34 on the approved land use assumptions and calculated in  
35 accordance with generally accepted engineering or planning  
36 criteria;

37 [7] the projected demand for capital improvements or facility  
38 expansions required by new service units projected over a  
39 reasonable period of time, not to exceed 10 years;

40 [8] the specific municipal actions necessary to implement the  
41 objectives of such plan; and

42 [9] an inventory of recreational resources and open space areas  
43 of the municipality, and policies and strategies for the manage-  
44 ment and protection of such resources and areas.

45 (b) Such plan shall be approved, and may be added to or  
46 changed from time to time, by a majority vote of such planning  
47 board and shall be a public record. The planning board, upon  
48 completion of any plan, or any change or amendment to a plan  
49 or report produced under this section, shall furnish a copy of such  
50 plan or amendments thereto, to the Executive Office of Environ-  
51 mental Affairs and the Executive Office of Communities and  
52 Development for review pursuant to regulations developed by the  
53 impact fee advisory board.

1 SECTION 3. The first paragraph of Section 81P of Chapter 41  
2 of the General Laws is hereby amended by adding the following  
3 sentence: — Issuance of a building permit on such land may be  
4 conditioned upon payment of an impact fee in accordance with  
5 the provisions of Section 9C of Chapter 40A of the General Laws.

1 SECTION 4. The first paragraph of Section 81Q of Chapter 41  
2 of the General Laws is hereby amended by inserting after the first  
3 sentence the following sentence: — In a city or town which has  
4 enacted impact fees pursuant to section 9C of Chapter 40A, the  
5 city or town may promulgate rules and regulations that provide  
6 for the imposition of impact fees.

1 SECTION 5. Within one hundred and twenty days of the  
2 effective date of this act, the executive office of environmental  
3 affairs shall promulgate rules and regulations, pursuant to  
4 Chapter 30A of the General Laws, which shall establish  
5 procedures to be utilized by local planning boards in developing  
6 a capital improvements plan pursuant to section 81D of chapter 41  
7 of the General Laws and in assessing impact fees by said boards  
8 pursuant to section 9C of chapter 40A of the General Laws. Said  
9 executive office shall create an advisory board consisting of the  
10 secretary of the executive office of communities and development,  
11 the secretary of the executive office of transportation and  
12 construction, the director of the governor's office of economic  
13 development, and five persons appointed by the secretary of envi-

14 ronmental affairs, one of whom shall be a member of the Massa-  
15 chusetts Municipal Association, one of whom shall be a member  
16 of a local planning board, one of whom shall be a member of a  
17 local conservation commission, one of whom shall be an  
18 individual with demonstrated expertise in the field of development  
19 and construction of residential commercial industrial projects,  
20 and one of whom shall be an individual with demonstrated  
21 expertise in land use planning to assist the executive office in the  
22 drafting of the said regulations. In addition, the advisory board  
23 shall review the capital improvements plans as developed by each  
24 city and town as well as monitor and evaluate the implementation  
25 of said capital improvements plans.

26 Failure by the executive office to promulgate rules and regu-  
27 lations shall not act to suspend or invalidate the effect of this act.

1 SECTION 6. The executive office of environmental affairs  
2 shall submit any rules and regulations promulgated under the  
3 provisions of this act to the committee on natural resources and  
4 agriculture and the senate and house committees on ways and  
5 means for review at least sixty days prior to the effective date of  
6 said regulations.

1 SECTION 7. The commissioner of administration is hereby  
2 directed to establish the schedule of fees authorized pursuant to  
3 the fourth sentence of subsection (6) of section 1 of this act to  
4 be effective no later than July first, nineteen hundred and ninety-  
5 one.

The first part of the report is devoted to a general survey of the  
 progress of the various departments of the service during the  
 year. It is followed by a detailed account of the operations of  
 the different branches, and concludes with a summary of the  
 results of the year. The report is divided into three main  
 parts: the first part contains a general survey of the  
 progress of the service; the second part contains a detailed  
 account of the operations of the different branches; and the  
 third part contains a summary of the results of the year.