

# HOUSE . . . . . No. 141

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## **The Commonwealth of Massachusetts**

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EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BOSTON, MASSACHUSETTS, NOVEMBER 7, 1990.

The Honorable Michael Connolly, *Secretary of State*  
1 Ashburton Place, Boston, Massachusetts 02202

Dear Secretary Connolly:

Pursuant to Chapter 30, section 33 of the General Laws, I am submitting to you today the 1991 legislative recommendations of the Department of Environmental Protection. These bills will enable the Department to manage such diverse activities as water pollution control and hazardous waste site clean-up.

Sincerely,

DANIEL GREENBAUM,  
*Commissioner.*

*LEGISLATION RECOMMENDATIONS OF THE  
DEPARTMENT OF ENVIRONMENT PROTECTION*

1. AN ACT RELATIVE TO WETLANDS PROTECTION.

The bill would amend the Wetlands Protection Act to address issues raised by the Supreme Judicial Court in *Commonwealth v. John Grant & Sons, Co.* The bill does not address issues not covered in the court's decision but simply would make explicit the authority of conservation commissions and DEP to enforce the Act (i.e. by conducting inspections); would allow administrative enforcement orders to require restoration of illegally altered wetlands; make it illegal to leave unauthorized fill in place; and provide that the statute of limitations would run from each continuing violation until the violator provides notice to the commission and the Department.

These amendments are urgently needed in order to restore the authority of conservation commissions and DEP to enforce the provisions of the Act and to protect the public benefits that this valuable natural resource provides. The intent of the amendments is to restore the "status quo" of authority for both organizations that existed before the court returned the Grant decision and to further ensure that those who work within the framework of the law are not at a disadvantage in comparison to competitors who chose to violate it. The proposed legislation provides that inspections may be made to determine the existence and extent of violations and compliance with an enforcement order.

The SJC in the 1988 *Grant* case ruled that conservation commissions lacked the authority to enforce the Wetlands Protection Act. It also found that the Department lacks the authority to treat as a separate offense each individual day the illegal fill remains in place. DEP's ability to penalize those who illegally fill or alter wetlands has, therefore, been greatly curtailed. The Court also ruled that the Act's two year statute of limitations does not run while illegal fill remains in place. Legislation reinstating the Commonwealth's long-standing interpretation of the Act is needed as soon as possible.

2. AN ACT TRANSFERRING CERTAIN AUTHORITIES FROM THE DIRECTOR, DIVISION OF WATER POLLUTION CONTROL, TO THE COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL PROTECTION.

The purpose of this act is to perform technical corrections to the enabling language and statutory authority of the Department of Environmental Protection's Division of Water Pollution Control. The existence of the Division predates the existence of DEP and its precursor DEQE. While the Division was incorporated into DEP, statutory authority giving the Commissioner signatory authority over grants, appointments, etc., never changed. This bill transfers those authorities from the Director, Division of Water Pollution Control, to the Commissioner of the Department of Environmental Protection, making it consistent with other DEP mandates.

3. AN ACT RELATING TO THE BOARD OF CERTIFICATION OF OPERATORS OF DRINKING WATER SUPPLY FACILITIES.
4. AN ACT FURTHER AMENDING THE MASSACHUSETTS CLEAN WATERS ACT TO CONFORM WITH THE FEDERAL CLEAN WATERS ACT.

This bill would amend and consolidate certain provisions of the Massachusetts Clean Waters Act (MCWA), M.G.L. c. 21, sections 26A, 27, 42-46A, pertaining to the issuance and enforcement of water pollution control permits by the DEQE Division of Water Pollution Control (DWPC).

This bill is necessary to promote efficient administration of DWPC permit programs. This bill will clarify language relating to enforcement, and will facilitate implementation by DEP of the hazardous waste initiative petition (Question 4) passed by the voters in 1986.

Specifically, the provisions of section 4 of the bill which allows the Director of the DWPC to exempt certain categories of projects from the DWPC permit procedures would help to streamline the completion of hazardous waste cleanup projects which under current law must go through the standard DWPC application and permitting process.

The bill will enable DWPC to apply for delegation of the federal water pollution control permit program, the National Pollutant

Discharge Elimination System (NPDES), from the U.S. Environmental Protection Agency (EPA). The NPDES program is currently administered jointly by EPA and DEP in Massachusetts.

This bill is intended to amend the MCWA in response to a number of objections and comments raised by EPA and to eliminate a number of related technical problems which inhibit efficient administration and enforcement of DWPC's regulatory authority.

This bill also would make the Massachusetts Clean Waters Act more consistent with the provisions of the Federal Clean Water Act.

The Massachusetts Clean Waters Act (the MCWA) (G.L. c. 21 §§ 26-53), originally enacted in 1966, requires DWPC to administer a number of regulatory, and grant and research programs intended to "enhance the quality and value of water resources . . . and for [the] prevention, control and abatement of water pollution."

Under the authority of the MCWA, DWPC administers three permit programs which regulate discharges to surface and subsurface waters of the Commonwealth and which regulated extensions of and connections to sewer systems.

The most recent set of major amendments to the permit provisions of the MCWA occurred in 1973; these amendments were intended to expand the sewer permit program and with an eye towards the provisions of federal law and EPA regulations governing the federal NPDES. For the past eleven years, DWPC has administered the sewer permit program and, in a "joint permit" arrangement with EPA, has regulated discharges to the surface waters.

Recently, DWPC has also established a program, complementing the Title 5 program, for regulating discharges to groundwater. Through this activity, DWPC has developed considerable expertise in permit administration.

No additional resources will be needed by DEQE to implement the provisions of this bill.

In 1988, this bill passed the House after receiving a FAVORABLE REPORT from the Natural Resources Committee and House Ways and Means.

In 1987, this bill (H-2397) was given a FAVORABLE REPORT by House Ways and Means and was voted to Third Reading by the House.

In 1986, this bill (as a Senate bill) was given a FAVORABLE REPORT by Senate Ways and Means and Passed the Senate.

The bill has ten sections:

SECTION 1 of the bill would amend the definition of "person" in c. 21, s. 26A by adding the term the "federal government".

SECTION 2 would amend c. 21, s. 27 clause (7) by adding text that would require that permits and permit applications be available to the public.

SECTION 3 would amend c. 21, s. 42 by striking the "use immunity" provision.

SECTION 4 would amend c. 21, s. 43 clause (2) by restating the authority for the various DWPC permit programs and to provide a clear statement of the circumstances in which DWPC would be authorized to provide for exemptions from the regulatory requirements of these programs.

SECTION 5 would amend c. 21, s. 43 clause (4) to restate the requirements of public notice of DWPC permit proceedings.

SECTION 6 would amend c. 21, s. 44 to refine the MCWA provisions authorizing the issuance of administrative orders. (New text is compatible with text in c. 21C, s. 9 and c. 21E, s. 9.)

SECTION 7 would amend c. 21, s. 45 to clarify provisions regarding administrative and judicial review under the Massachusetts Administrative Procedure Act (c. 30A). (New text incorporates provisions found in sections 45 and 46A of the current law.)

SECTION 8 would amend c. 21, s. 46 to clarify provisions authorizing the Superior Court to issue orders involving injunctive relief to stop ongoing and prevent prospective water pollution law violations. (New text includes a provision found in section 46A of the current law.)

SECTION 9 repeals c. 21, s. 46A. The provisions now found in that section would be consolidated, in a more logical sequence, in the sections revised by sections 7 and 8 of this bill.

SECTION 10 would increase the penalty, under MGL c. 40, §21, from \$50 to \$5,000 for violations of local bylaws regarding the use of common sewers and the connections which may be made thereto. This change would be consistent with a change made in a statute last year which increased the fine for violations of regulations on common sewers to \$5,000.

5. AN ACT AMENDING CERTAIN SECTIONS OF CHAPTER 21 MGL, TO FACILITATE THE WASTE SITE CLEAN-UP PROCESS.

The purpose of this legislation is to amend the General Laws regarding the clean-up of hazardous waste. The amendments reflect recommendations made to the Department of Environmental Protection by an advisory committee composed of industry, environmental, small business, municipal, and consultant representatives. It outlines new provisions whereby there will be greater involvement in clean-up by private, licensed site managers, auditing of the clean-ups by the State, and a permit process for privately funded clean-ups.

Since the advisory committee is still, as of the date of the filing, in the process of finalizing its recommendations, there are sections contained within the current draft which are placeholders for the finalized language.



