

HOUSE No. 774

The Commonwealth of Massachusetts

PRESENTED BY:
Stephen Kulik

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:
An Act authorizing the establishment of old growth forest reserves.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Peter v. Kocot	1st Hampshire
Theodore C. Speliotis	13th Essex
Ellen Story	3rd Hampshire
Denise Provost	27th Middlesex
Frank I. Smizik	15th Norfolk
Paul J. Donato	35th Middlesex
William N. Brownsberger	24th Middlesex
Barbara A. L'Italien	18th Essex
Steven J. D'Amico	4th Bristol
Rosemary Sandlin	3rd Hampden
Bruce E. Tarr	First Essex and Middlesex
Carl M. Sciortino, Jr.	34th Middlesex
Matthew C. Patrick	3rd Barnstable
Kay Khan	11th Middlesex
John W. Scibak	2nd Hampshire
Kate Hogan	3rd Middlesex
Christine E. Canavan	10th Plymouth
Thomas M. Stanley	9th Middlesex
Elizabeth A. Malia	11th Suffolk
Cheryl A. Coakley-Rivera	10th Hampden
Paul McMurtry	11th Norfolk
Richard J. Ross	9th Norfolk
Kevin G. Honan	17th Suffolk
Jonathan Hecht	29th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 797 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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AN ACT AUTHORIZING THE ESTABLISHMENT OF OLD GROWTH FOREST RESERVES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 132 of the General Laws is hereby amended by adding the following four sections:—

Section 52. It is hereby declared to be the policy of the Commonwealth to protect old growth forests for the purpose of protecting exemplary forest habitats, maintaining biodiversity associated with old growth forest systems and establishing ecological benchmarks for assessing the health of forests statewide. Therefore, the Commonwealth determines that a system of permanent old growth forest reserves shall be established on lands owned and administered by the Commonwealth for the department of environmental management and the division of fisheries, wildlife and environmental law enforcement.

Section 53. For the purposes of Sections 52 to 55, inclusive, the following words shall have the following meanings:—

“Buffer area”, an area immediately adjacent to an old growth forest that is of sufficient size and configuration, as determined by the secretary for each old growth forest, to protect the old growth forest from human activity and alteration and the effects of natural disturbances such as wind, storms, fire, insect infestation, invasive species and disease

“Future old growth forest”, a forest adjacent to an old growth forest that:—

- (1) exhibits some old growth characteristics;
- (2) occurs in direct association with and as an integral part of an old growth forest; and
- (3) has the capacity to protect old growth forest areas because of its forest characteristics and location.

“Old growth forest”, an area of contiguous forest that:—

- (1) shows no evidence of significant human, post-European disturbance that originated on site;
- (2) has a significant component of older trees that are greater than 50 percent of the maximum longevity for the particular species;
- (3) is at least five acres in size; and
- (4) has either: — (i) the capacity for self-perpetuation; or (ii) the characteristics of a forest which are indicative of an old growth forest and which otherwise meets the criteria established by regulations of the secretary. Modification of this definition may be made by regulation to incorporate future scientific advances in the understanding of old growth forests.

“Old growth forest reserve”, forest area comprised of old growth forest, buffer area and future old growth forest.

“Recommending party”, the commissioner of conservation and recreation or the commissioner of fish and game.

“Secretary”, the secretary of environmental affairs.

“State-owned land”, forest land owned by the Commonwealth under the custody and control of the department of conservation and recreation or the department of fish and game.

“Existing Use”, any commercial or recreational project, facility, roadway, industrial or utility corridor, or the repair or future maintenance therein within its existing parameters: —

- (1) existing at the time of enactment, or
- (2) having received Massachusetts Environmental Policy Act (MEPA) approval and permits from all applicable state and federal agencies at the time of enactment, and which if challenged in a timely judicial proceeding has been upheld by a final court order.

Section 54. (a) The secretary shall conduct an inventory of the forests on state-owned land to determine the extent and condition of old growth forest stands in the context of the surrounding landscape in which they occur. The inventory shall identify old growth forests and buffer areas and shall include an assessment and selection of future old growth forest areas that exhibit characteristics which, if left undisturbed, would meet the definition of an old growth forest.

(b) The secretary may designate a reserve comprised of old growth forest or future old growth forest, together with buffer areas, after the forest area has been presented by a recommending party to the secretary in accordance with regulations set by the secretary. In approving, rejecting or modifying a designation, the secretary shall consider: —

- (1) whether the area recommended is consistent with the definition of old growth forest, future old growth forest or buffer area;
- (2) whether such designation is consistent with the ecological, historical, educational, cultural, water supply, recreational and other public values of the area; and
- (3) the role of the proposed area within a statewide old growth forest reserve system. If the recommended area meets the definition set forth in Section 53 of this chapter and other criteria set by the secretary pursuant to this section, the secretary shall, after a public hearing, held within 180 days of the presentation to the secretary and conducted in the region in which the recommended area is located pursuant to regulations promulgated by the secretary, designate it as an old growth forest reserve. The reserve shall be defined by a visible boundary. Any ten citizens of the Commonwealth other than the recommending parties may present areas for designation to the secretary, subject to criteria to be established by the secretary by regulation.

Section 55. (a) The secretary shall develop, in consultation with the recommending party and, if different, the administering agency, plans for the management and protection of old growth forest reserves consistent with the regulations. The secretary shall authorize the continuation of fishing and hunting in designated old growth forest reserves unless prohibitions thereon had been in effect or unless fishing and hunting is thereafter determined inappropriate by the administering agency. The secretary may authorize the continuation of existing recreational uses and facilities within the old growth forest reserve if they do not significantly contribute to erosion or other harmful impacts on the forest resources. Upon a determination of the adequacy of a recommendation, the secretary shall immediately establish a moratorium on any activity incompatible with the establishment of an old growth forest reserve for the location pending outcome of a final determination by the secretary.

(b) The following uses and activities shall be prohibited within the boundaries of old growth forest reserves: — (i) new commercial, industrial, roadway or utility development; (ii) new or expanded recreational facilities and uses involving physical impacts to vegetation or soils; and (iii) active timber management practices. Removal or alteration of vegetation and soils or collecting or harvesting of plants shall be prohibited except as part of a scientific investigation or restoration program approved or conditioned by the secretary. The secretary shall develop regulations pursuant to Chapter 30A for the establishment and management of old growth forest reserves. The prohibitions in this paragraph shall not apply to emergency personnel in the event of a medical or public safety emergency in an old growth forest reserve. The secretary may approve other exceptions to the prohibitions by issuing a written declaration of emergency in the event of a major accidental, human-induced disturbance, such as when the introduction of exotic invasive plants, disease or insects threatens the integrity of an old growth

reserve or in the event of a public health or public safety emergency. Natural forest fires and storm related damage shall not be considered emergencies except in the event of a significant threat to public health or public safety. The secretary shall restrict management of invasive plants, diseases or insects to activities that are essential to the maintenance of the natural characteristics of the old growth forest reserves and shall condition such activities to minimize interference with the development and maintenance of natural old growth forest conditions.

(c) Any person who violates this section or any rule or regulation promulgated pursuant to this section shall be punished by a fine of not more than \$25,000 or by imprisonment for not more than two years or both, or shall be subject to a civil penalty of not more than \$25,000 for each violation. Each day such violation occurs shall be considered a separate violation.

(d) The superior court shall have jurisdiction to enjoin violations of, or to grant such additional relief as it deems necessary or appropriate to secure compliance with this section upon petition of the secretary or the attorney general.

(e) All fines and assessments received on account of litigation or settlement thereof for a violation of this section or regulations promulgated hereunder shall be retained by the department of conservation and recreation or the department of fish and game, depending on whose land said violation occurred.

SECTION 2. The secretary of environmental affairs shall establish a research and education program to monitor the status of forests within old growth forest reserves and to promote understanding of old growth forest reserves.

SECTION 3. The secretary of environmental affairs shall report to the General Court within one year after the effective date of this act identifying the results of the inventory, the regulations developed, and the progress made in designating old growth forest reserves and the preparation of management plans for old growth forest reserves.