

SENATE NO. 560

AN ACT RELATIVE TO EFFICIENCY AND FAIRNESS IN ENVIRONMENTAL LAW ENFORCEMENT

*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. Section 16 of chapter 21A of the General Laws, as appearing in the 2000
2 Official Edition, is hereby amended by inserting after the definition of "Department," the
3 following definition:-

4 "Environmentally beneficial", primarily benefiting the public health, safety or welfare,
5 or the environment.

6 SECTION 2. Said section 16 of said chapter 21A, as so appearing, is hereby further
7 amended by inserting after the definition of "Person" the following definition:-

8 "Supplemental environmental project", any environmentally beneficial project or actions
9 approved by the commissioner that a regulated entity agrees to undertake in settlement of an
10 enforcement action brought by the department and is not otherwise required to perform.

11 SECTION 3. Said section 16 of said chapter 21A, as so appearing, is hereby further
12 amended by striking out, in lines 136 and 137, the words "making compliance less costly than
13 non-compliance" and inserting in place thereof the following words:-

14 a person's commitment to perform a supplemental environmental project and the cost of
15 that project; the economic benefit realized by a person for non-compliance; the need to make
16 non-compliance more costly than compliance in order to ensure compliance.

17 SECTION 4. Said section 16 of said chapter 21A, as so appearing, is hereby further
18 amended by inserting after the words "the department may require that the amount of a civil
19 administrative penalty imposed pursuant to this section," the following words:-

20 or supplemental environmental projects undertaken in settlement of an enforcement
21 action

22 SECTION 5. Said section 16 of said chapter 21A, as so appearing, is hereby further
23 amended by inserting after the words "exceed the economic benefit realized by a person for
24 noncompliance," the following sentence:-

25 For any supplemental environmental project undertaken in settlement of an assessment
26 for non-compliance, the department shall make reasonable efforts to determine the monetary
27 cost of the supplemental environmental project.

28 SECTION 6. Said section 16 of said chapter 21A, as so appearing, is hereby further
29 amended, by adding the following paragraph:-

30 The department may recommend a supplemental environmental project to a person from
31 whom it is seeking a civil administrative penalty, and may accept the performance of a
32 supplemental environmental project or projects in lieu of payment for a portion of the monetary
33 penalties that the department would otherwise seek to impose, equal to the cost of performing
34 the supplemental environmental project. The department may also impose the maximum
35 penalties as set forth in this section in addition to approving a supplemental environmental
36 project.

37 SECTION 7. Section 18 of said chapter 21A, as so appearing, is hereby amended by
38 inserting in the first paragraph, after the definition of "Department," the following definition:-

39 "Environmentally beneficial", primarily benefiting the public health, safety or welfare,
40 or the environment.

41 SECTION 8. Said section 18 of said chapter 21A, as so appearing, is hereby further
42 amended by inserting in the first paragraph after the definition of "Person" the following:-

43 "Supplemental environmental project", any environmentally beneficial project or actions
44 approved by the commissioner that a regulated entity agrees to undertake in settlement of an
45 enforcement action brought by the department and is not otherwise required to perform.

46 SECTION 9. Subsection (i) of said section 18 of said chapter 21A, as so appearing, is
47 hereby amended by inserting after paragraph (5) the following paragraph:-

48 (6) On or before November 1 of each year, the commissioner, after consultation with the
49 advisory committee on fees and program improvements, shall prepare a recommended schedule
50 of annual compliance assurance fees that must be charged to entities regulated by the
51 department that would generate sufficient revenue to defray the costs of inspection, compliance
52 monitoring and enforcement pursuant to all environmental statutes, regulations, orders, licenses,
53 permits or approvals and submit that schedule to the secretary of environmental affairs, the
54 secretary of administration and finance, the joint committee on natural resources and agriculture
55 and the house and senate committees on ways and means.

56 SECTION 10. Said section 18 of said chapter 21A, as so appearing, is hereby further
57 amended by striking out, in lines 353 and 354, the words: "and a summary of the significant
58 improvements the department has made in its permitting and compliance programs." and
59 inserting in place thereof the following words:-

60 "a summary of the significant improvements the department has made in its permitting
61 and compliance programs; the number of on site inspections conducted; the number of such

62 inspections that were conducted without notice; the number of incidences of non-compliance by
63 category of violation; the number of administrative enforcement actions taken with respect to
64 such non-compliance and the results thereof, including the amount of fines and penalties
65 collected; the number of judicial enforcement actions taken with respect to such non-
66 compliance and the results thereof, including the amount of fines and penalties collected; and a
67 description of any supplemental environmental projects undertaken and the environmental
68 benefits resulting from each project."

69 SECTION 11. Subsection (k) of said section 18 of said chapter 21A, as so appearing, is
70 hereby further amended by adding the following two sentences:-

71 Subject to appropriation, the department shall create and maintain an enforcement
72 database, available for public inspection, which, for every regulated entity, sets forth the
73 compliance and enforcement status, including the frequency and extent of any non-compliance;
74 dates and findings of inspections; compliance assistance provided through state-funded
75 programs; the existence of any non-compliance actions which are ongoing or which have
76 occurred in the previous two years, except where disclosure would jeopardize ongoing
77 investigations or any legal action; results of any enforcement actions, including the provisions
78 of completed consent orders, a description of any supplemental environmental projects
79 undertaken in the previous year and the environmental benefits resulting there from; the status
80 of deadlines for deliverables, including whether the deadlines were met; discharge or emission
81 concentrations reported relative to permitted concentrations, for entities holding discharge or
82 emission permits; and withdrawal volumes relative to permitted volumes for entities holding
83 permits to withdraw water resources.

84 Subsequent to the creation of the database, the department shall submit a report, on or
85 before December 31 of each calendar year, to the joint committee on natural resources and
86 agriculture and to the house and senate committees on ways and means describing the amount
87 of funds necessary to maintain the enforcement database.

88 SECTION 12. Said subsection (k) of said section 18 of said chapter 21A, as so
89 appearing, is hereby further amended by adding the following paragraph:-

90 On or before October 1 of each year, the department shall develop a report that
91 establishes goals for inspection, compliance monitoring and enforcement. In developing the
92 report, the department shall consider existing environmental conditions in the commonwealth,
93 including current methods of compliance monitoring and pending enforcement actions and
94 current assessments for non-compliance. The report shall include, but not be limited to, the
95 number of citizens complaints filed in the last fiscal year; the results of inspection; the
96 incidences of compliance monitoring and enforcement actions across all regional department
97 offices; agency resources for compliance monitoring, including those directed to training
98 enforcement staff; the types of penalties imposed and collected for significant violations; and
99 available systems for tracking ongoing inspection, compliance monitoring and enforcement. On
100 or before October 1 of each year, the department shall forward a copy of its report to the
101 advisory committee.

102 SECTION 13. Section 19G of said chapter 21A, as so appearing, is hereby amended by
103 inserting after subsection (2) the following subsection:-

104 (3) In assessing a civil administrative penalty as provided for in this section, the
105 department may require the monetary costs of such penalties to exceed the economic benefit
106 realized by a person for non-compliance. For any supplemental environmental project

107 undertaken in settlement of an assessment for non-compliance, the department shall make
108 reasonable efforts to determine the monetary cost of the supplemental environmental project.

109 SECTION 14. The department shall prepare a report describing its ability, within its
110 existing resources, to comply with the requirements of section 10 of this act and a detailed
111 estimate of the costs and additional resources needed to create and maintain the database
112 described in this section. The department shall submit the report to the joint committee on
113 natural resources and agriculture and the house and senate committee on ways and means on or
114 before October 1, 2008.

115 SECTION 15. Nothing contained in this act shall be construed as limiting any existing
116 remedy for non-compliance available to the department under existing law.