

HOUSE No. 3976

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 18, 2019.

The committee on Environment, Natural Resources and Agriculture to whom were referred the petition (accompanied by bill, Senate, No. 490) of Patricia D. Jehlen, Jason M. Lewis, Mike Connolly, Bruce E. Tarr and other members of the General Court for legislation to promote awareness of sewage pollution in public waters, and the petition (accompanied by bill, House, No. 751) of Linda Dean Campbell, Denise Provost and others relative to promoting awareness of sewage pollution in public water, reports recommending that the accompanying bill (House, No. 3976) ought to pass.

For the committee,

SMITTY PIGNATELLI.

HOUSE No. 3976

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act promoting awareness of sewage pollution in public waters.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith certain requirements and procedures to notify the public of sewage discharges into the waters of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health.

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 21 of the General Laws is hereby amended by inserting after
2 section 43 the following section:-

3 Section 43A. (a) As used in this section, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:-

5 “Combined sewer system”, a sewer system designed to collect and convey storm
6 water runoff and sewage in shared piping.

7 “Department”, the department of environmental protection.

8 “Discharge” or “discharging”, a release or diversion of sewage, industrial waste or
9 other effluent, which is untreated or partially treated, including from a combined sewer overflow,
10 that is emitted from an outfall directly or indirectly into waters of the commonwealth.

“Outfall”, an outlet designed for the purpose of allowing a discharge that is part of, or connected to, a combined sewer system, sanitary sewer system or treatment works, including a connection to any such system or facility, intended to allow wastewater to divert or bypass treatment by a facility.

“Permittee”, a person granted a permit under section 43 to operate and maintain a particular outlet for the discharge of pollutants into waters of the commonwealth or a person discharging pollutants from an outlet without a required permit or in violation of the conditions of a valid permit.

(b) A permittee shall issue a public advisory when there is a discharge from the permittee’s outfall, in accordance with this section. The department may allow a permittee to issue a combined advisory message when a weather event or other related occurrence involves more than 1 of the permittee’s outfalls discharging into the same water body or waterway. To continue to inform the public about a discharge or potential environmental hazard from a discharge, a permittee shall update its advisory as required by regulation or directive of the department. Notwithstanding, an update advisory shall issue every 8 hours for an ongoing discharge and within 2 hours when a discharge ceases or is projected to cease, unless a regulation or directive requires a more immediate advisory, or requires a different time for a combined advisory message allowed by the department.

A public advisory shall, to the extent a permittee has the information available, describe in plain language the: (i) outfall’s location; (ii) approximate time, date, and duration of the discharge; (iii) estimated volume of the outfall discharge based on the average discharge from data reported to the department for the prior 3 calendar years; (iv) waters and land areas

33 affected or expected to be affected by the discharge; (v) identity of the outfall permittee; (vi)
34 precautionary measures for the public to avoid health risks from contact with effluent; and (vii)
35 information that the department shall prescribe by regulation or directive. In addition, the public
36 advisory shall include a statement that the outfall discharge consists or likely consists, of
37 untreated sewage and wastes.

38 (c) As soon as possible, but no later than 2 hours after the discovery of a discharge
39 from the permittee's outfall a permittee shall issue a public advisory to the department of public
40 health, the municipal board of health or the health department where the outfall is located, and to
41 the department. The department shall adopt regulations relative to the procedures and
42 circumstances in which the permittee must notify municipalities impacted by a discharge from
43 the outfall; provided, however, notification shall be provided to all municipalities directly
44 affected by such a discharge. In addition, the commissioner may issue a directive requiring
45 specific procedures and circumstances for such notification by a permittee.

46 The commissioner may, for discharges that need immediate notification, require by
47 regulation or directive that such advisory be issued in less than 2 hours.

48 The permittee shall update its public advisory as provided under subsection (b).

49 When permittee is required to notify a municipal board of health or health
50 department, the permittee shall also provide the same notification, to the chief administrative
51 officer of that municipality.

52 (d) Not later than 2 hours after discovery of a discharge from the permittee's outfall,
53 the permittee shall issue a public advisory by email or text messaging to individuals that
54 subscribe to receive notifications about a discharge from the permittee's outfall. The permittee

shall also send the advisory to the 2 largest news organizations that report on local news in communities near the outfall.

The permittee shall update its public advisory as provided under subsection (b).

A permittee of an outfall shall establish a public website to post advisories when issued and to receive requests from the public to subscribe to permittee's discharge notifications. The department may, by regulation require that permittees provide advisories by other means, including, but not limited to, telephone voice messaging and social media.

(e) The department in consultation with the department of public health shall by regulation, establish standards and guidelines requiring municipal boards of health or their health departments to issue public health warnings when notified by a permittee about a discharge under subsection (c). When warnings are necessary, a municipal health board or its health department shall utilize the municipality's existing emergency notification system, including if available reverse 911 emergency calls. To protect public health, the commissioner may direct a municipal health official of a board or department to issue a public warning about a discharge. Nothing in this subsection shall preempt a municipal board of health or health department from issuing necessary public warnings concerning an outfall discharge.

(f) A permittee shall work with the department to establish the metering, modeling or other method the permittee will use to determine or discover when a discharge occurs at its outfall to comply with the notification requirements of this section. If an outfall will not have metering equipment to detect and transmit reliable information about a discharge within the timeframes established by subsections (c) and (d), the permittee shall apply to the commissioner for authorization to use another method. The commissioner shall approve the proposed method,

provided the permittee can obtain reliable information by such method about any discharge from its outfall and issue public advisories within said established timeframes.

If the proposed method or the current discharge detection capabilities of the permittee's outfall will not provide timely or reliable information, the commissioner may extend the time for a permittee to issue a public advisory, provided that such time shall be extended only as necessary, and by not more than 24 hours after discovery of the discharge. A permittee that has been granted an extension shall be directed by the department to establish improvements that need to be made, if any, to detect an outfall discharge within the timeframes established by subsections (c) and (d).

Upon application of the permittee, the commissioner may waive any requirement under this section related to permittee's outfall, provided that: (i) the outfall is decommissioned; or (ii) there has not been significant discharge from the outfall, as determined by the department, during the preceding 5 years; and (iii) the waiver will not pose a substantial threat to public health or to the environment. A waiver shall be valid for not more than 5 years. Authorizations and waivers allowed by the commissioner under this subsection shall be in writing and shall specify the conditions for each exception.

(g) The permittee shall install and maintain conspicuous warning signage at the location of its outfall and at public access points to waters affected by a potential discharge from permittee's outfall as determined by the department, including entrances to boat ramps, piers and designated swimming areas. Signage shall be suitable for its location and be of the size and form of notice as the department shall prescribe in compliance with this subsection. Each sign shall: (i) identify the existence of the outfall, (ii) inform about weather events that can cause a discharge,

(iii) warn of the potential threat to public health by recreating in, or using waters and shores affected by a discharge, (iv) provide information for the public to subscribe to notifications about outfall discharges in local area waters, and (v) provide other information as required by the department. Such signage shall conform to all applicable provisions of federal law and related regulations. The department shall coordinate with the department of conservation and recreation, municipalities, and other landowners that have public access points that may be affected by a discharge, for the placement and maintenance of such signage on public and private property. Upon request of a landowner, the department may allow suitable signage that is more aesthetic for a particular location on such owner's land.

(h) The department shall establish and maintain a public website to provide information about discharge notifications sent by permittees to the department under subsection (c). The website shall display information about current outfall discharges in the commonwealth within 24 hours of the department receiving such data, provide an access point for subscriptions to public advisories regarding discharges and timely updates about those discharges.

(i) Not later than May 15 of each year, the department shall issue a report providing a summary of all outfall discharge activity reported for the previous calendar year, including information about total discharge volumes, frequencies and pretreatment of effluent from any outfall discharging during that year into water bodies or waterways of defined regional areas. Annual reports shall be posted on the department's public website.

SECTION 2. The department shall adopt regulations for the implementation and administration of section 1 of this act not later than 8 months after the passage of this act.

120 SECTION 3. Section 1 of this act shall take effect 14 months after the passage of this
121 act.