

HOUSE No. 774

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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:

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

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

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

12 “Buffer area”, an area immediately adjacent to an old growth forest that is of sufficient
13 size and configuration, as determined by the secretary for each old growth forest, to protect the

14 old growth forest from human activity and alteration and the effects of natural disturbances such
15 as wind, storms, fire, insect infestation, invasive species and disease

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

17 (1) exhibits some old growth characteristics;

18 (2) occurs in direct association with and as an integral part of an old growth forest; and

19 (3) has the capacity to protect old growth forest areas because of its forest characteristics
20 and location.

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

22 (1) shows no evidence of significant human, post-European disturbance that originated on
23 site;

24 (2) has a significant component of older trees that are greater than 50 percent of the
25 maximum longevity for the particular species;

26 (3) is at least five acres in size; and

27 (4) has either: — (i) the capacity for self-perpetuation; or (ii) the characteristics of a
28 forest which are indicative of an old growth forest and which otherwise meets the criteria
29 established by regulations of the secretary. Modification of this definition may be made by
30 regulation to incorporate future scientific advances in the understanding of old growth forests.

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

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

35 “Secretary”, the secretary of environmental affairs.

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

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

40 (1) existing at the time of enactment, or

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

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

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

54 (1) whether the area recommended is consistent with the definition of old growth forest,
55 future old growth forest or buffer area;

56 (2) whether such designation is consistent with the ecological, historical, educational,
57 cultural, water supply, recreational and other public values of the area; and

58 (3) the role of the proposed area within a statewide old growth forest reserve system. If
59 the recommended area meets the definition set forth in Section 53 of this chapter and other
60 criteria set by the secretary pursuant to this section, the secretary shall, after a public hearing,
61 held within 180 days of the presentation to the secretary and conducted in the region in which the
62 recommended area is located pursuant to regulations promulgated by the secretary, designate it
63 as an old growth forest reserve. The reserve shall be defined by a visible boundary. Any ten
64 citizens of the Commonwealth other than the recommending parties may present areas for
65 designation to the secretary, subject to criteria to be established by the secretary by regulation.

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

75 incompatible with the establishment of an old growth forest reserve for the location pending
76 outcome of a final determination by the secretary.

77 (b) The following uses and activities shall be prohibited within the boundaries of old
78 growth forest reserves: — (i) new commercial, industrial, roadway or utility development; (ii)
79 new or expanded recreational facilities and uses involving physical impacts to vegetation or
80 soils; and (iii) active timber management practices. Removal or alteration of vegetation and soils
81 or collecting or harvesting of plants shall be prohibited except as part of a scientific investigation
82 or restoration program approved or conditioned by the secretary. The secretary shall develop
83 regulations pursuant to Chapter 30A for the establishment and management of old growth forest
84 reserves. The prohibitions in this paragraph shall not apply to emergency personnel in the event
85 of a medical or public safety emergency in an old growth forest reserve. The secretary may
86 approve other exceptions to the prohibitions by issuing a written declaration of emergency in the
87 event of a major accidental, human-induced disturbance, such as when the introduction of exotic
88 invasive plants, disease or insects threatens the integrity of an old growth reserve or in the event
89 of a public health or public safety emergency. Natural forest fires and storm related damage shall
90 not be considered emergencies except in the event of a significant threat to public health or
91 public safety. The secretary shall restrict management of invasive plants, diseases or insects to
92 activities that are essential to the maintenance of the natural characteristics of the old growth
93 forest reserves and shall condition such activities to minimize interference with the development
94 and maintenance of natural old growth forest conditions.

95 (c) Any person who violates this section or any rule or regulation promulgated pursuant
96 to this section shall be punished by a fine of not more that \$25,000 or by imprisonment for not

97 more than two years or both, or shall be subject to a civil penalty of not more than \$25,000 for
98 each violation. Each day such violation occurs shall be considered a separate violation.

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

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

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

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