

**SENATE . . . . . No. 444**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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, or  
5 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 cost  
27 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 the

34 supplemental environmental project. The department may also impose the maximum penalties as  
35 set forth in this section in addition to approving a supplemental environmental project.

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

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

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

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

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

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

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

59 "a summary of the significant improvements the department has made in its permitting  
60 and compliance programs; the number of on site inspections conducted; the number of such  
61 inspections that were conducted without notice; the number of incidences of non-compliance by  
62 category of violation; the number of administrative enforcement actions taken with respect to  
63 such non-compliance and the results thereof, including the amount of fines and penalties  
64 collected; the number of judicial enforcement actions taken with respect to such non-compliance  
65 and the results thereof, including the amount of fines and penalties collected; and a description of  
66 any supplemental environmental projects undertaken and the environmental benefits resulting  
67 from each project."

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

70 Subject to appropriation, the department shall create and maintain an enforcement  
71 database, available for public inspection, which, for every regulated entity, sets forth the  
72 compliance and enforcement status, including the frequency and extent of any non-compliance;  
73 dates and findings of inspections; compliance assistance provided through state-funded  
74 programs; the existence of any non-compliance actions which are ongoing or which have  
75 occurred in the previous two years, except where disclosure would jeopardize ongoing  
76 investigations or any legal action; results of any enforcement actions, including the provisions of

77 completed consent orders, a description of any supplemental environmental projects undertaken  
78 in the previous year and the environmental benefits resulting there from; the status of deadlines  
79 for deliverables, including whether the deadlines were met; discharge or emission concentrations  
80 reported relative to permitted concentrations, for entities holding discharge or emission permits;  
81 and withdrawal volumes relative to permitted volumes for entities holding permits to withdraw  
82 water resources.

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

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

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

99 October 1 of each year, the department shall forward a copy of its report to the advisory  
100 committee.

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

103 (3) In assessing a civil administrative penalty as provided for in this section, the  
104 department may require the monetary costs of such penalties to exceed the economic benefit  
105 realized by a person for non-compliance. For any supplemental environmental project  
106 undertaken in settlement of an assessment for non-compliance, the department shall make  
107 reasonable efforts to determine the monetary cost of the supplemental environmental project.

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

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