

HOUSE No. 3670

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, September 30, 2013.

The committee on Environment, Natural Resources and to whom was referred the petition (accompanied by bill, House, No. 749) of Stephen Kulik and others for legislation to establish old growth forest reserves in the Commonwealth, reports recommending that the accompanying bill (House, No. 3670) ought to pass.

For the committee,

ANNE M GOBI.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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 inserting after
2 section 51 the following five sections:-

3 Section 52. It is hereby declared to be the policy of the Commonwealth 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 state-owned lands under the custody
8 and control of the department of conservation and recreation and the department of fish and
9 game.

10 Section 53. For the purposes of Sections 52 to 56, inclusive, the following words shall
11 have the following meanings:

12 “Buffer area”, an area on state-owned land immediately adjacent to an old growth forest
13 that is of sufficient size and configuration, as determined by the secretary for each old growth
14 forest, to: (i) protect the old growth forest from human activity and alteration, and (ii) mitigate
15 the effects of natural disturbances including but not limited to, wind, storms, fire, insect
16 infestation, invasive species and disease.

17 “Old growth forest”, an area of contiguous forest on state-owned land that:

18 (1) shows no evidence of significant human, post-European disturbance that originated on
19 the site;

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

22 (3) is at least 5 acres in size; and

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

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

28 “Recommending party”, the commissioner of the department of conservation and
29 recreation, the commissioner of the department of fish and game.

30 “Secretary”, the secretary of the executive office of energy and environmental affairs.

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

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

35 (1) existing as of the date of enactment of this act, or

36 (2) approved under the Massachusetts Environmental Policy Act (“MEPA”) and where
37 any required approvals and permits have been issued by state and federal agencies, as of the date
38 of such enactment; provided such approvals or permits are valid and which if challenged in a
39 timely judicial proceeding has been upheld by a final court order.

40 Section 54. (a) The secretary shall conduct an inventory of the forests on state-owned
41 land to determine the extent and condition of old growth forest stands, based on existing
42 inventory data and assessments by the departments of conservation and recreation and the
43 department of fish and game. The secretary shall direct such departments to conduct additional
44 assessments and inventories i as he deems necessary. The preliminary identification of old
45 growth forest stands should also include an estimate of the needed buffer areas with the rationale
46 for size and shape of such buffer areas.

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

51 (1) whether the area recommended is consistent with the definitions of old growth forest
52 and buffer area;

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

55 (3) the role of the proposed area within a statewide old growth forest reserve system. If
56 the recommended area appears to meet the definition of an old growth forest as set forth under
57 Section 53 and other criteria established by the secretary pursuant to this section, the secretary
58 may designate it as an old-growth forest reserve, after: (i) holding a public hearing within 180
59 days of the presentation to the secretary, to be held in the region where the the proposed old
60 growth reserve is located and (ii) consulting with elected officials of each town where the
61 proposed old-growth reserve is located.

62 Section 55. (a) The secretary shall develop, in consultation with the recommending party
63 and, if different, the administering agency, plans for the management and protection of old
64 growth forest reserves consistent with regulation. The secretary shall authorize the continuation
65 of fishing and hunting in designated old growth forest reserves, unless prohibited by regulation.
66 Notwithstanding, the administering agency, after such designation, may restrict or prohibit any
67 activity of fishing and hunting, if determined as not suitable for the proection and management of
68 the old growth forest reserve. The secretary may also authorize the continuation of any existing
69 use within the old growth forest reserve, provided such use does not significantly contribute to
70 erosion or other harmful impacts on the forest resources. Upon a determination of the adequacy
71 of a recommendation, the secretary shall immediately establish a moratorium on any activity that
72 is incompatible with the establishment of an old growth forest reserve at such location during the
73 period pending his final determination on designating such area an old growth forest reserve.

74 (b) The following uses and activities shall be prohibited within the boundaries of old
75 growth forest reserves that have been designated by the secretary in accordance with the
76 provisions under subsection (b) of section 54: (i) new commercial, industrial, roadway or utility
77 development; (ii) new or expanded recreational facilities and uses involving physical impacts to
78 vegetation or soils; and (iii) active timber management practices. Removal or alteration of
79 vegetation and soils, and collecting or harvesting of plants shall be prohibited, except in
80 connection with a scientific investigation or restoration program approved or subject to the
81 conditions, by the secretary. The secretary shall adopt regulations for the establishment and
82 management of old growth forest reserves. The prohibitions in this paragraph shall not apply to
83 emergency personnel in the event of a medical or public safety emergency in an old growth
84 forest reserve. The secretary may approve other exceptions to the prohibitions by issuing a
85 written declaration of emergency in the event of a major accidental, human-induced disturbance,
86 including without limitations in the event of the introduction of exotic invasive plants, disease or
87 insects threatens the integrity of an old growth reserve; a public health, or public safety
88 emergency and to protect the health and well-being of the surrounding public and private forests.
89 Natural forest fires and storm related damage shall not be considered emergencies, except in the
90 event of a significant threat to public health, public safety and to protect the health and well-
91 being of the surrounding public and private forests. The secretary shall restrict management of
92 invasive plants, diseases or insects to activities that are essential to the maintenance of the natural
93 characteristics of the old growth forest reserves, and shall condition such activities to minimize

94 interference with the development and maintenance of natural old growth forest conditions
95 without harming the health and well-being of the surrounding public and private forests.

96 (c) Any person who violates this section or any regulation promulgated pursuant to this
97 section shall be punished by a fine of not more than \$25,000 or by imprisonment for not more
98 than 2 years or both, or shall be subject to a civil penalty of not more than \$25,000 for each
99 violation. Each day such violation occurs or continues shall be considered a separate violation.

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

103 (e) All fines and assessments received from the litigation or settlement for a violation of
104 this section or regulations adopted hereunder shall be retained by the department of conservation
105 and recreation or the department of fish and game, which has the custody and control of the land
106 where the violation occurred.

107 Section 56 (a). The secretary of energy and environmental affairs shall establish a
108 research and education program, with an identified funding source, to monitor the status of
109 forests within old growth forest reserves and to promote understanding of old growth forest
110 reserves.

111 (b). The secretary of energy and environmental affairs shall establish an oldgrowth forest
112 reserve advisory board, which shall include qualified scientists and local officials to review and
113 comment on the research, education and monitoring program. The secretary shall file a report
114 with the General Court within 1 year after the effective date of this act identifying the results of
115 the inventory, the regulations developed, and the progress made in designating old growth forest
116 reserves and the preparation of management plans for old growth forest reserves. The report of
117 the advisory board shall be included as an Appendix to the secretary's report to the General
118 Court.