

HOUSE No. 3766

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, September 21, 2015.

The committee on Environment, Natural Resources and Agriculture to whom was referred the petition (accompanied by bill, House, No. 675) of William C. Galvin and Brian A. Joyce relative to the siting of facilities dealing with refuse, reports recommending that the accompanying bill (House, No. 3766) ought to pass.

For the committee,

PAUL A. SCHMID, III.

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to the siting of facilities dealing with refuse.

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 150A of chapter 111 of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended , in lines 1 through 111, by striking out the first through
3 tenth paragraphs , inclusive, and inserting in place thereof the following 15 paragraphs:-

4 Section 150A. As used in this section and in section one hundred and fifty A1/2 the
5 following words shall, unless the context otherwise requires, have the following meanings:—

6 “Department”, the department of environmental protection.

7 “Facility”, a sanitary landfill, a refuse transfer station, a refuse incinerator rated by the
8 department at more than one ton of refuse per hour, a resource recovery facility, a refuse
9 composting plant, a dumping ground for refuse or any other works for treating, storing, or
10 disposing of refuse.

11 “Facility Density Zone”, a geographical area or zone where 5 or more existing facility
12 sites are situated, in part or whole, within 4 miles of a proposed new or expanded facility site, to

13 be measured from the nearest boundary point. Additionally, an existing facility site for the
14 purposes of this definition shall include, (i) the proposed facility site, if being expanded, and (ii)
15 the site of another proposed facility where a site assignment was made by the local board of
16 health or department within the last 3 years, provided no permit to establish, construct or expand
17 the other facility was issued by the department. A proposed facility shall be deemed as within
18 such area or zone, if the defined requisite numbers of existing facility sites are located within 4
19 miles of a boundary of the proposed facility site.

20 “Local board of health”, the board of health of the municipality where, the proposed new
21 facility or expanded facility is planned to be located or sited, or the existing facility is located or
22 sited.

23 “Refuse”, all solid or liquid waste materials, including garbage and rubbish, and sludge,
24 but not including sewage, and those materials defined as hazardous wastes in section two of
25 chapter twenty-one C and those materials defined as source, special nuclear or by-product
26 material under the provisions of the Atomic Energy Act of 1954.

27 “Maintain”, to establish, keep or sustain the presence of a facility on a site, whether or
28 not such facility is in operation and whether or not such facility has been closed.

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

30 No place in any city or town shall be maintained or operated by any person, including
31 any political subdivision of the commonwealth, as a site for a facility, or as an expansion of an
32 existing facility, unless, after a public hearing, such place has been assigned by the local board of
33 health of such city or town in accordance with the provisions of this section, or, in the case of a
34 facility owned or operated by an agency of the commonwealth, such place has been assigned by

35 the department after a public hearing and unless public notice of such assignment has been given
36 by the board of health or the department, whichever is applicable.

37 The determination by the local board of health, or the department in the case of a state
38 agency, of whether to assign a place as a site for a facility, or for the expansion of an existing
39 facility, shall be based upon the site suitability criteria established by the department in
40 cooperation with the department of public health pursuant to section one hundred and fifty A 1/2,
41 and any site assignment shall be subject to such limitations with respect to the extent, character
42 and nature of the facility or expansion thereof as may be necessary to ensure that the facility or
43 expansion thereof will not present a threat to the public health, safety or the environment.

44 Any person desiring to maintain or operate a site for a new facility or the expansion of an
45 existing facility shall submit an application for a site assignment to the local board of health and
46 simultaneously provide copies to the department and the department of public health. A copy of
47 the application for site assignment shall be filed with the board of health of any municipality
48 within one-half mile of the proposed site. Any municipality within such one-half mile shall be
49 afforded all the procedural rights of an abutter for the purpose of administrative review by the
50 department or public hearing by the board of health where the proposed site is located, in
51 addition to any other procedural rights specified under this section. The department shall, upon
52 request by the local board of health, provide advice, guidance and technical assistance to said
53 board during its review of a site assignment application. The department and a board of health
54 may enter into such other cooperative agreements in addition to those herein specified for the
55 purpose of achieving an effective and expeditious review of the application. The local board of
56 health may charge a reasonable application fee to cover the costs of conducting a hearing and
57 reviewing technical data submitted to the board. The application fee may also include a portion

58 of the reasonable costs of other technical assistance. The application fee shall be established in
59 accordance with rules and regulations promulgated by the department.

60 Within 90 days of receipt of the application, the department shall issue a report stating
61 whether the proposed site meets the criteria established under section 150A1/2 for the protection
62 of the public health and safety and the environment. As part of the report, the department shall
63 list the type and location of any existing facility within 4 miles of the proposed facility site and,
64 if applicable, certify the site is located within a facility density zone. Any such reports shall be
65 made available to the public in a timely manner prior to any public hearing concerning the site
66 application. A copy of the report shall be sent to the board of health in which such facility is
67 located and the board of health of each municipality located within one-half mile of the proposed
68 facility site.

69 Within 90 days of receipt of said application, the department of public health shall review
70 said application and comment thereon as to any potential impacts of a site on the local and
71 regional public health and safety. The department of public health shall, in addition to its
72 comment, make or cause to be made a public report, in writing, as it relates to an expansion of an
73 existing facility or the assignment of a place as a site for a facility and provide said report with
74 its written comments to the board of health in which such facility is located and the board of
75 health of each municipality located within one-half mile of the proposed facility site. The
76 department of public health shall coordinate and cooperate with a board of health on any matter
77 relating to said public health report.

78 Within 30 days of receipt of both the department and department of public health reports,
79 the board of health of any other municipality within one-half mile of a proposed new or

80 expanded facility site, may, if the site is within a facility density zone, hold a public hearing to
81 consider the public health and safety impacts of the proposed facility on its community. Within
82 30 days of any initial hearing, such board may, render a written determination on the suitability
83 of the proposed facility. Any determination of non-suitability by the board of health shall include
84 a statement of the specific reasons thereof, in fact or law, based on the criteria set forth under
85 clauses 1 through 14, inclusive, of section 150A ½, as determined by the board to adversely
86 impact the public health or safety of the community. Any such board rendering a determination
87 shall publish notice of the determination with its entire statement and provide a copy to: (i) the
88 department; (ii) department of public health; and (iii) the board of health of the municipality
89 where the facility is proposed to be sited.

90 Any person, including a political subdivision of the commonwealth, desiring to establish
91 a new facility or expand an existing facility under this section, shall file a written notification
92 with the secretary for a determination of whether an environmental review is required for the
93 proposed facility under the Massachusetts Environmental Policy Act, established under sections
94 61 through 62I, inclusive, of chapter 30, subject to the provisions of this section; provided, that
95 the new or expanded capacity for the facility, is 50 tons or more, per day of refuse, unless the
96 proposed site location is within a facility density zone. The notification shall be made in the
97 manner prescribed by the secretary, no later than 10 days after making an application for site
98 assignment to the local board of health. An environmental impact report shall be mandatory for a
99 proposed new or expanded facility without exception or waiver, where, (i) the facility site is
100 located in a facility density zone and the facility's planned new or expanded capacity is 20 tons
101 or more, per day of refuse, or (ii) the facility's planned new or expanded capacity is 150 tons or
102 more, per day of refuse. Each environmental impact report for such new or expanded facility

103 shall include a detailed assessment of the siting criteria set forth under section 150A ½. The
104 secretary shall, in his review and decision to accept or certify, the impact report whether in draft
105 or final form, additionally consider any adverse local and regional public health and safety and
106 environmental impacts of such proposed new or expanded facility as evidenced by any reports
107 issued by the department and department of public health, and determination of non-suitability
108 by any board of health in accordance with this section.

109 Notwithstanding any other law, regulation or rule to the contrary, where a proposed new
110 or expanded facility is owned or operated by an agency of the commonwealth, an environmental
111 impact report shall be mandatory under the Massachusetts Environmental Policy Act, without
112 exception or waiver, where the siting or capacity of such facility meets the same requirements
113 specified under clause (i) or (ii) of the prior paragraph. Such report shall include a detailed
114 assessment of the siting criteria for the proposed facility as set forth under section 150A ½.

115 Within 30 days after the secretary's determination that an environmental impact report is
116 not required, or if so required, after the secretary approves the report, the local board of health
117 shall, prior to its decision on site assignment, hold a public hearing satisfying the requirements of
118 chapter thirty A. If notification to the secretary is not required under the second preceding
119 paragraph, said hearing shall be held within 30 days of the board's receipt of both the department
120 and department of public health reports.

121 Within forty-five days of the initial date of such hearing, the local board of health shall
122 render its decision on whether to assign a site for a facility, in writing, accompanied by a
123 statement of reasons therefor and publish notice of said decision including determinations of
124 each issue of fact or law necessary to the decision.

125 No assignment shall be granted by the local board of health unless the department's
126 report and the environmental impact report affirm that the siting criteria of said section one
127 hundred and fifty A1/2 have been met by the proposed site. The local board of health shall
128 consider the concerns, if any, relative to the public health and safety cited by the department of
129 public health and a board of health of any municipality that is within one-half mile of a proposed
130 facility site. A local board of health shall assign a place requested by an applicant as a site for a
131 new facility or the expansion of an existing facility unless it makes a finding, based on the siting
132 criteria established by said section one hundred and fifty A 1/2, that the siting thereof would
133 constitute a danger to the public health or safety or the environment.

134 Any person aggrieved by a decision of (i) a local board of health in assigning or refusing
135 to assign a place as a site for a new facility, or expanding or refusing to expand an existing
136 facility, except a resource recovery facility in operation or under construction prior to July first,
137 nineteen hundred and eighty-seven, or (ii) a board of health on the suitability of a proposed
138 facility that is planned to be located or sited within one-half mile outside the municipality, may,
139 within thirty days of the publication of notice of such decision, appeal under the provisions of
140 section fourteen of chapter thirty A. For the limited purposes of such an appeal, a local board of
141 health under clause (i) or other board of health under clause (ii), shall be deemed to be a state
142 agency under the provisions of said chapter thirty A and its proceedings and decision shall be
143 deemed to be a final decision in an adjudicatory proceeding.

144 No facility shall be established, constructed, expanded, maintained, operated or devoted
145 to any past closure as defined by regulation unless detailed operating plans, specifications, any
146 public health reports and necessary environmental reports have been submitted to the
147 department, the department has granted a permit for the facility and notice of the permit is

148 recorded in the registry of deeds, or if the land affected thereby is registered land in the registry
149 section of the land court for the district wherein the land lies. Within 120 days after the
150 department is satisfied that the operating plans, specifications and reports are complete, the
151 department shall make a decision granting or refusing to grant a permit. The permit may limit or
152 prohibit the disposal of particular types of solid waste at a facility in order to protect the public
153 health, promote reuse, waste reduction and recycling, extend the useful life of the facility, or
154 reduce its environmental impact.

155 Notwithstanding the provisions of the prior paragraph, the department shall not grant any
156 permit for the establishment, construction, or expansion of any facility, unless the environmental
157 impact report, if required, has been approved by the secretary, and the report provides in specific
158 detail, for each siting of the criteria listed under section 150A ½, that the proposed facility meets
159 all such siting requirements. Based on the impact report, the department prior to granting any
160 permit, shall make a required finding under section 61 of said chapter 30, which shall specify all
161 feasible measures to be taken in the establishment, construction or expansion of the facility to
162 avoid potential damage to the environment, or to the extent damage to the environment cannot be
163 avoided, to minimize and mitigate such environmental damage to the maximum extent possible.
164 Such measures, if feasible and practicable, shall be a required condition of any permit so issued.

165 SECTION 2. Said section 150A of said chapter 111, as so appearing, is further amended
166 by inserting in the twelfth paragraph, after the words “decision by a”, in line 124, the following
167 word:- local

168 SECTION 3. Section 150A ½ of said chapter 111, as so appearing , is hereby amended by
169 striking out clauses 15 through 17, inclusive, and inserting in place thereof the following 3
170 clauses:-

171 (15) the extent to which existing solid waste disposal facilities are located within a
172 municipality. Site assignments for new facilities are preferred in municipalities without existing
173 facilities, except where the proposed facility site is to be located within a facility density zone;

174 (16) the extent to which the solid waste disposal needs of the municipality in which the
175 site is sought are met as a member of a regional refuse disposal district. Site assignments in
176 municipalities not participating in regional refuse disposal districts are preferred, unless the
177 proposed facility is to be located in a facility density zone;

178 (17) the potential adverse impacts on communities within 4 miles of the proposed site
179 including, (i) the potential adverse impacts on communities where there is an existing
180 concentration of solid waste disposal facilities in one or more communities, if the proposed site
181 is located within a facility density zone, and (ii) the potential adverse impacts on the
182 considerations stated within this section for which site suitability standards and criteria are
183 established.