

SENATE No. 462

The Commonwealth of Massachusetts

PRESENTED BY:

Michael F. Rush

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the safety and reclamation of quarries.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>
<i>Edward F. Copping</i>	<i>10th Suffolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Leah Cole</i>	<i>12th Essex</i>
<i>Theodore C. Speliotis</i>	<i>13th Essex</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>

SENATE No. 462

By Mr. Rush, a petition (accompanied by bill, Senate, No. 462) of Michael F. Rush, Edward F. Coppinger, James B. Eldridge, Lori A. Ehrlich and other members of the General Court for legislation relative to the safety and reclamation of quarries. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

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

An Act relative to the safety and reclamation of quarries.

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. The General Laws are hereby amended by inserting after chapter 21B the
2 following chapter:-

3 CHAPTER 21B1/2.

4 QUARRY SAFETY AND RECLAMATION.

5 Section 1. This chapter shall be known as the Quarry Safety and Reclamation Act and
6 shall govern all quarrying operations which are conducted in the commonwealth.

7 Section 2. As used in this chapter the following words shall have the following meanings
8 unless the context clearly indicates otherwise:—

9 “Department”, the department of environmental protection

"Operator", a person, firm, association, company, or corporation thereof in immediate possession of any quarry or quarry claim or its accessories as owner or lessee and, as such, responsible for its management and condition.

Section 3. The department shall conduct a complete inventory of all operating and abandoned quarries in the commonwealth and a financial analysis of the cost of regulating quarries no later than 120 days after the passage of this act.

Section 4. No operator shall engage in any quarrying or reclamation activities in the commonwealth without having first obtained from the department an operating permit that covers the affected land. Current operators of active quarries shall obtain a permit for continuing use within 12 months of the date of promulgation of the rules and regulations provided for in section 4 of this chapter.

Section 5. The department shall develop a permitting process for quarries and shall promulgate rules and regulations necessary to carry out said permitting process. Said rules and regulations shall include requirements not limited to the following:

(a) An operating permit shall be granted for a period not exceeding 5 years. If the quarrying operation terminates and the reclamation required under the approved reclamation plan is completed prior to the end of the 5 year period, the permit shall terminate. Termination of a permit shall not have the effect of relieving the operator of any obligations that the operator has incurred under the approved reclamation plan or otherwise. Each quarry permit shall be issued for a term of five years and is renewable for subsequent terms of five years. The director may grant an administrative extension of an existing permit for a period not to exceed one year. The application may be in writing and on a form prepared and furnished by the department.

(b) The application for a permit shall be accompanied by copies of an enlarged United States geological survey topographic map meeting the requirements of subsection (c).

(c) A map prepared and certified by or under the supervision of a registered professional civil engineer, or a registered professional mining engineer, or a licensed land surveyor, who shall submit to the department a certificate of registration as a qualified engineer or land surveyor. Said map shall include the following:

(1) Identification of the area to correspond with the application;

(2) Probable limits of adjacent underground quarrying operations, probable limits of adjacent inactive or quarried-out areas and the boundaries of surface properties and names of surface and mineral owners of the surface area within five hundred feet of any part of the proposed disturbed area;

(3) The names and locations of streams, creeks, tributaries or bodies of public water, roads, buildings, cemeteries, active, abandoned or plugged oil and gas wells, and utility lines on the area of land to be disturbed and within five hundred feet of such area;

(4) Appropriate markings of the boundaries of the area of land to be disturbed and the total number of acres involved in the area of land to be disturbed;

(5) The drainage plan for runoff on and away from the area of land to be disturbed. Such plan shall indicate the directional flow of water, constructed drainage systems, natural waterways used for drainage, and the streams or tributaries receiving or to receive this discharge.

(d) The permit application shall include the following information:

(1) The names and addresses of every officer, partner, director, and owner of the quarry;

(2) The names and mailing addresses of any person owning of record or beneficially ten percent or more of any class of stock of the applicant;

(3) A certificate of registration administered by the executive office of public safety and security pursuant to section 21.

(e) Other information required by the director reasonably necessary to effectuate the purposes of this section.

Section 6. The department may require a bond payable to the commonwealth with sureties satisfactory to the department or such other security as the department determines adequately secures compliance with this act, conditioned upon the faithful performance of the requirements set forth in this act. Other security may include a security deposit with the commonwealth, an escrow account and agreement, insurance or an irrevocable trust. In determining the amount of the bond or the security, the department shall take into consideration the future suitable use of the land involved and the cost of grading and reclamation required. All proceeds of forfeited bonds or other security must be expended by the department for the reclamation of the area for which the bond was posted and any remainder returned to the operator. The department shall also promulgate rules and regulations pursuant to the development of a state "quarry reclamation fund" to be used to supplement funding for final reclamation of the affected land.

Section 7. The application for a new permit shall include a proposed reclamation plan. In developing said reclamation plan, all measures reasonable shall be taken to eliminate damages to members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, water and air pollution and hazards dangerous to life and property.

Current operators of active quarries shall have three years from the date of obtaining an operating permit to file a proposed reclamation plan with the department. No applicant shall engage in any reclamation activities until a reclamation plan is filed and approved by the department with corresponding local approval set forth by the department. Said plan shall include but not be limited to the following:

(a) Provisions for the health, safety and general well-being to persons and to adjoining properties for all activities in the reclamation process;

(b) A proposed post-quarrying land use for the site. The proposed land use shall be consistent with local land use plans and local zoning at the time the plan is submitted. The proposed land use shall also be consistent with any applicable state, local or federal laws in effect at the time the plan is submitted;

(c) A description of the proposed reclamation, including methods and procedures to be used and a proposed schedule and sequence for the completion of reclamation activities for various stages of reclamation of the site, accompanied by a certified acceptance of the reclamation plan and end use of the site by the local municipality in which the reclamation will take place;

(d) A plan for restoration of the impacted land to a condition that is similar to or compatible with the conditions that existed before excavation;

(e) Information sufficient to describe the existing natural and physical conditions of the site;

(f) A site-specific description of how reclamation activities are to be coordinated to minimize total land disturbance and nuisance to the general public;

(g) Methods to be used to provide public safety for adjacent properties and the general public and provisions for fencing, signs, or other site improvements reasonably necessary to assure safety at the site during reclamation activities and when the reclamation is completed.

The plan shall also include any information as may be reasonably required by the department and the municipality where the operation resides.

Section 8. The department shall post a public notice no later than 90 days after receipt of a completed application submitted in accordance with this chapter. Said public notice shall include a brief description of the reclamation planned at the site the application covers. The department shall make available such application to the public upon request. The notice shall give opportunity for a public hearing and shall announce the locations at which the public may review the application request and all supporting materials included in the reclamation plan.

Section 9. The department shall direct investigations as it may be reasonably necessary to carry out its duties as prescribed by this chapter. The department may, for this purpose, enter at a reasonable time upon any quarrying operation for the purpose of determining compliance with this chapter or any rules adopted under this chapter and for determining compliance with terms and conditions of a quarrying permit. No person shall refuse entry or access to any authorized representative of the department who enters the quarrying operation for the purposes of inspection or other official duties; nor shall any person obstruct, hamper, or interfere with the representative of the department while the representative is carrying out official duties. Upon arriving at the site, the representative of the department shall make every reasonable effort to

117 notify the operator or the operator's agent that the representative of the department intends to
118 inspect the site. The department shall review any complaints or points of inquiry from the
119 general public or the elected and appointed public officials representing the area of the quarry
120 site in determining whether investigations of the site should be conducted.

121 The operator shall proceed with reclamation as scheduled in the approved reclamation
122 plan. The department shall conduct an inspection and give written notice to the operator of any
123 deficiencies noted. The operator shall thereupon commence action within 30 days to rectify these
124 deficiencies and shall diligently proceed until they have been corrected. The department may
125 extend performance periods for delays clearly beyond the operator's control, but only in cases
126 where the department finds that the operator is making every reasonable effort to comply.

127 Upon completion of reclamation of an area of affected land, the operator shall notify the
128 department. The department shall make an inspection of the area, and if it finds that reclamation
129 has been properly completed, it shall notify the operator in writing and release the operator from
130 further obligations regarding the affected land. At the same time, the department shall release all
131 or the appropriate portion of any performance bond or other security that the operator has posted
132 under section 5.

133 If at any time the department finds that reclamation of the permit area is not proceeding
134 in accordance with the reclamation plan and that the operator has failed within 30 days after
135 notice to commence corrective action, or if the department finds that reclamation has not been
136 properly completed in conformance with the reclamation plan within two years, or longer if
137 authorized by the department, after termination of quarrying on any segment of the permit area,
138 the department shall initiate forfeiture proceedings against the bond or other security filed by the

139 operator. In addition, failure to implement the reclamation plan shall constitute grounds for
140 suspension or revocation of the operator's permit.

141 If at any time it appears to the department from its inspection of the affected land that the
142 activities under the reclamation plan and other terms and conditions of the permit are failing to
143 achieve the purposes and requirements of this act, it shall give the operator written notice of that
144 fact, of its intention to modify the reclamation plan and other terms and conditions of the permit
145 in a stated manner, and of the operator's right to a hearing on the proposed modification at a
146 stated time and place. The date for such hearing shall be not less than 30 or more than 60 days
147 after the date of the notice unless the department and the operator shall mutually agree on
148 another date. Following the hearing the department shall have the right to modify the reclamation
149 plan and other terms and conditions of the permit in the manner stated in the notice or in such
150 other manner as it deems appropriate in view of the evidence submitted at the hearing.

151 Whenever the department shall have reason to believe that a violation of this act, any
152 rules adopted under this act, or the terms and conditions of a permit, including the approved
153 reclamation plan, has taken place, it shall serve written notice of the apparent violation upon the
154 operator, specifying the facts constituting the apparent violation and informing the operator of
155 the operator's right to an informal conference with the department. The date for an informal
156 conference shall be not less than 30 days nor more than 60 days after the date of the notice,
157 unless the department and the operator mutually agree on another date. If the operator or the
158 operator's representative does not appear at the informal conference, or if the department
159 following the informal conference finds that there has been a violation, the department may
160 suspend, or revoke the permit until the violation is corrected or may revoke the permit where the
161 violation appears to be willful.

Any operator whose permit has been suspended or revoked shall be denied a new permit or a renewal of an existing permit to engage in mining until the operator gives evidence satisfactory to the department of the operator's ability and intent to fully comply with the provisions of this act and rules adopted under this act, and the terms and conditions of the permit, including the approved reclamation plan, and that the operator has satisfactorily corrected all previous violations.

Section 10. The department may deny a permit application, modification or transfer for one or more of the following reasons:

(1) any requirement of federal or state environmental law, rule or regulation would be violated by the proposed permit; (2) the proposed quarry operation will be located in an area in the state which the department finds ineligible for a permit pursuant to the size, scope and location of quarry; (3) failure to provide all relevant information under the provisions of the act.

Section 11. No provision of this act shall be construed to supersede or otherwise affect or prevent the enforcement of any zoning regulation or ordinance duly adopted by an incorporated city or town or by any agency or department of the commonwealth except insofar as a provision of said regulation or ordinance is in direct conflict with the provisions of this act

Section 12. No provision of this act shall be construed to restrict or impair the right of a private or public person, association, corporation, partnership, officer, or agency to bring any legal equitable action for redress against nuisances or hazards.

Section 13. Nothing in this act shall affect any state, county, or municipal authority to acquire land by eminent domain.

Section 14. There is hereby established a quarry safety inspector within the executive office of public safety and security. The inspector may be assisted by and supervise such other safety inspectors, technicians, and employees as may be necessary to perform the duties set forth in section 15, subject to appropriation.

The duties of the inspector shall be to inspect, investigate, inquire and examine the operation, workings, methods, safety devices and appliances, machinery, sanitation, ventilation, means of ingress and egress, means taken to protect lives and ensure the safety and health of employees and the general public, any cause of accidents, injuries or fatalities and means taken to comply with this act. The inspector shall conduct tests to determine the quality of air together with contaminants therein or for any purpose that shall provide for the maintenance of safe, sanitary and healthful conditions. The inspector shall furnish reports and do other related work as required to comply with this section.

The inspector shall have the power and authority, upon exhibition of official credentials, at all reasonable hours to enter and examine any part of a quarry, its equipment or workings. All operators and their employees shall render all assistance necessary to facilitate such examination.

It shall be the duty of the inspector to cause to have inspected at least once in every calendar year, every quarry permitted in the commonwealth.

After every inspection, the quarry safety inspector shall record the quarry safety inspection. This record shall be open to the public. Nothing contained in or omitted from any entry in such record shall limit or affect the duty and obligations of the operator.

Section 15. The executive office of public safety and security shall issue a report detailing all inspection activities and findings not later than 90 days after the beginning of each

205 calendar year together with recommendations of laws, rules and regulations pertaining to the
206 operation and safety of quarries to provide for reasonable and adequate protection to the lives,
207 health and safety of employees and the general public, and protection of property. The secretary
208 shall promulgate, make, amend and repeal necessary rules and regulations in the operations and
209 methods of quarrying activities.

210 Section 16. The secretary may charge an inspection fee payable by the operator of a
211 quarry an amount commensurate with the cost of said inspection and the cost to the state for any
212 other safety inspectors, technicians and other employees deemed necessary to carry out an
213 inspection.

214 Section 17. If, upon examination or inspection, it shall appear to an inspector that a
215 quarry or part thereof is, from any cause, in a dangerous condition, or fails to comply with the
216 provisions of this act or any other General Law or promulgated rule or regulation, the inspector
217 shall at once notify the operator in charge thereof. Said notice shall be in writing and shall
218 outline in detail where the quarry fails to comply with the requirements of this chapter. The
219 operator of said quarry shall forthwith make changes necessary to comply with the requirements
220 of this act.

221 Section 18. In case of any civil or criminal proceedings at law against the parties so
222 notified, on account of loss of life or bodily injuries sustained by an employee or the general
223 public subsequent to such notice, and in consequence of such dangerous condition, and without
224 an affirmative and diligent effort having been made to remedy the same to the satisfaction of the
225 commissioner, a certified copy of the notice served by the office shall be prima facie evidence of
226 the negligence of such party or parties.

227 Section 19. If it appears from a reexamination of the mine by the inspector that such
228 changes or compliances have not been made within the time specified in such notice, and that the
229 mine or part of such mine is still in an unlawful condition or dangerous to life, health or property
230 and in the opinion of the secretary it is necessary for the protection of life, health or property that
231 such mine or part of the quarry be vacated, the secretary shall forthwith order the cessation of
232 the operation and working of said quarry or part of quarry, and order that the employees shall not
233 be permitted therein for any purpose other than to remedy the defects complained of, until the
234 provisions of this act are complied with to the satisfaction of the secretary. The operator of said
235 mine shall forthwith obey said order.

236 Section 20. If a representative of the section finds conditions in any mine which in his
237 opinion are dangerous to the health and lives of employees, owners of the surface of the ground
238 above the mine or the general public, he shall report the facts forthwith to the secretary. The
239 secretary shall order all workings stopped in the particular section of the quarry in which the
240 dangerous condition was found, if in his or her opinion such an action is necessary to preserve
241 life and limb. Work shall not be resumed until the secretary so authorizes.

242 Section 21. The secretary shall require that every quarry of any operator be registered
243 with the office and that a certificate of registration be obtained before the opening of such
244 quarry. The application and certificate forms shall be prescribed by the secretary.

245 Section 22. A certificate of registration shall expire 1 year from its effective date, unless
246 sooner revoked or suspended by the secretary. A certificate of registration may be renewed upon
247 the filing of an application of renewal on a form prescribed by the office. A certificate of
248 registration shall at all times be prominently displayed at quarry of the operator.

249 Section 23. The commissioner shall have the power and authority to charge an annual
250 registration fee of not less than \$500 nor more than \$3,000 for each certificate of registration
251 issued. Thereafter, these fees may be adjusted by the secretary in accordance with fee schedules
252 adopted by regulation.

253 Section 24. Whenever the secretary receives a complaint in writing signed by 2 or more
254 persons employed in a mine, setting forth that the mine or part thereof in which he or they are
255 working is being operated contrary to law, or is dangerous in any respect to the health or lives of
256 those employed therein, he shall cause to be inspected such mine as soon as possible. The names
257 of the persons making such complaint shall be kept secret, unless permission to disclose them be
258 expressly granted by the persons making the complaint. Such complaint shall in all cases set
259 forth the nature of the danger existing at the mine, and the time when such danger was first
260 observed. If, after such inspection, it is found that the conditions are dangerous to the health or
261 lives of those employed therein, the commissioner shall serve a notice, setting forth fully the
262 facts, upon the operator or any person having charge of such mine, and shall order the operator
263 of said mine or mines to remove such dangerous or harmful conditions, and the operator of said
264 mine shall obey said order.

265 Section 25. Whenever loss of life or serious accident shall occur in any quarry, the
266 operator thereof shall forthwith give notice immediately in the quickest possible manner, and, in
267 addition, shall report the facts thereof in writing within 24 hours after such occurrence in a
268 manner prescribed by the secretary.