

# SENATE . . . . . No. 2394

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninetieth General Court  
(2017-2018)  
\_\_\_\_\_

SENATE, Thursday, April 5, 2018

The committee on Environment, Natural Resources and Agriculture, to whom was referred the petitions (accompanied by bill, Senate, No. 448) of Patricia D. Jehlen, James M. Cantwell, Daniel J. Ryan, James B. Eldridge and other members of the General Court for legislation to promote awareness of safe recreation in public waterways; and (accompanied by bill, House, No. 2935) of Denise Provost and others for legislation to further regulate the discharge of pollutants into waters,- reports the accompanying bill (Senate, No. 2394).

For the committee,  
Anne M. Gobi

# SENATE . . . . . No. 2394

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninetieth General Court  
(2017-2018)  
\_\_\_\_\_

An Act promoting awareness of sewage pollution in public waters.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith certain requirements and procedures to notify the public of sewage discharges into the waters of the commonwealth, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health.

*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 21 of the General Laws, is hereby amended by inserting after  
2   section 43 the following section:-

3           Section 43A. (a) As used in this section, the following words shall, unless the context  
4   clearly requires otherwise, have the following meanings:-

5           "Combined sewer system", a sewer system designed to collect and convey, storm  
6   water runoff and sewage in shared piping.

7           "Department", the department of environmental protection.

8           "Discharge" or "discharging", a release or diversion of sewage, industrial waste or  
9   other effluent, which is untreated or partially treated, including from a combined sewer overflow,  
10   that is emitted from an outfall directly or indirectly into waters of the commonwealth.

11 “Outfall”, an outlet designed for the purpose to allow a discharge that is part of, or  
12 connected to a combined sewer system, sanitary sewer system or treatment works, including a  
13 connection to any such system or facility, intended to allow wastewater to divert or bypass  
14 treatment by a facility.

15 “Permittee”, a person granted a permit under section 43, to operate and maintain a  
16 particular outlet for the discharge of pollutants into waters of the commonwealth; and, to include  
17 for the purposes of this definition, a person discharging pollutants from an outlet, without a  
18 required permit or in violation of the conditions of a valid permit.

19 (b) A permittee shall issue a public advisory when there is a discharge from  
20 permittee’s outfall in accordance with the provisions of this section. The department may allow a  
21 permittee to issue a combined advisory message when a weather event or other related  
22 occurrence involves more than 1 outfall of the permittee discharging into the same water body or  
23 waterway. To continue to inform the public about a discharge or potential environmental hazard  
24 from a discharge, a permittee shall update its advisory as required by regulation or directive of  
25 the department.

26 A public advisory shall, to the extent a permittee has available information, describe  
27 in plain language the (1) outfall’s location, (2) approximate time, date and duration of the  
28 discharge, (3) estimated discharge volume, (4) overall discharge water quality determined by any  
29 pre-treatment of the effluent to remove bacteria, solid wastes, and other pollutants, (5) waters  
30 and land areas affected or expected to be affected by such discharge, (6) identity of the outfall  
31 permittee, (7) precautionary measures for the public to avoid health risks from contact with  
32 effluent, and (8) information as the department shall prescribe by regulation or directive.

33 (c) A permittee shall issue a public advisory no later than 2 hours after discovery of a  
34 discharge or an expected discharge, from the permittee's outfall to the department of public  
35 health, the municipal board of health or its health department where the outfall is located, and to  
36 the department. The permittee shall also send the advisory to other municipal boards of health or  
37 their health departments in cities and towns with waters and land areas that are affected, and in  
38 those municipalities that are expected to be affected, by such discharge as defined by the  
39 department. Notwithstanding, where a city or town obtains its public water supply from, or near  
40 a water body or waterway that could be affected by such discharge, the permittee shall send an  
41 advisory without delay to its municipal health board or department. Advisories shall be  
42 communicated in the manner prescribed by regulation or directive of the commissioner. The  
43 commissioner may, for discharges that need emergency notification, require by regulation or  
44 directive that such advisory be issued in less than 2 hours.

45 (d) The permittee shall also issue a public advisory by email or text messaging to the  
46 public that subscribe to receive notifications about a discharge from permittee's outfall, to  
47 include any subscription requests shared by the department that relate to permittee's outfall. An  
48 advisory shall issue no later than 4 hours after discovery of a discharge, or after a discharge is  
49 expected to occur, from the permittee's outfall as defined by the department. The permittee shall  
50 also send the advisory to the 2 largest news organizations that report on local news in  
51 communities near the outfall.

52 A permittee of an outfall shall establish a public website to post advisories when  
53 issued and to receive requests from the public to subscribe to permittee's discharge notifications.  
54 The department by regulation may require that permittees provide advisories by other means,  
55 including, without limitation, telephone voice messaging and social media.

(e) The department in consultation with the department of public health shall by regulation, establish standards and guidelines requiring municipal boards of health or their health departments to issue public health warnings when notified by a permittee about a discharge under subsection (c). When warnings are necessary, a municipal health board or its health department shall utilize the municipality's existing emergency notification system, including if available reverse 911 emergency calls. To protect public health, the commissioner may direct a municipal health official of a board or department to issue a public warning about a discharge. Nothing in this subsection shall preempt municipal boards of health or their health departments from issuing necessary public warnings concerning an outfall discharge.

(f) The permittee shall install and maintain conspicuous warning signage at the location of its outfall and at public access points to waters affected by a potential discharge from permittee's outfall as determined by the department, including entrances to boat ramps, piers and designated swimming areas. Signage shall be suitable for its location and be of the size and form of notice as the department shall prescribe in compliance with this section. Each sign shall include the following information using plain language and symbols to (1) identify the existence of the outfall, (2) inform about any weather events that can cause a discharge, (3) warn of the potential threat to public health by recreating in, or using waters and shores affected by a discharge, (4) recommend precautions for safe recreation around affected waters and shores, and (5) provide information for the public to subscribe to notifications about discharges in area waters. Such signage shall conform to all applicable provisions of federal law and related rules and regulations.

77           The department shall coordinate with the department of conservation and recreation,  
78 municipalities, and other landowners that have public access points that may be affected by a  
79 discharge, for the placement and maintenance of such signage on public and private property.

80           (g) A permittee shall provide the department with a plan that details the type of  
81 metering, modeling or other method, permittee will use to determine when a discharge occurs at  
82 its outfall to comply with the notification requirements of this section. Such plan shall, be  
83 submitted no later than 6 months after the department adopts regulations for this section under  
84 subsection (j), and when application is made for a permit or renewal of permit, to operate and  
85 maintain an outlet under section 43.

86           If an outfall will not have metering equipment to detect and transmit reliable  
87 information about a discharge in real-time, the permittee shall apply to the commissioner for  
88 authorization to use another method. The commissioner shall approve the proposed method,  
89 provided the permittee by such method can obtain reliable information about any discharge from  
90 its outfall and issue public advisories within the times required by this section.

91           If the proposed method or the current discharge detection capabilities of permittee's  
92 outfall will not provide timely or reliable information, the commissioner may extended the time  
93 for a permittee to issue a public advisory, provided such time shall be extended only as  
94 necessary, not to exceed 24 hours. An extension may, be authorized only after the permittee  
95 provides to the commissioner an amended plan of permittee's intended improvements to its  
96 system to better detect an outfall discharge that is acceptable to the commissioner.

97           Upon application of the permittee, the commissioner may waive any requirement  
98 under this section related to permittee's outfall, provided the outfall is decommissioned, or any

discharge from the outfall has occurred rarely, in the prior 5 years and will pose no substantial threat to public health or the environment. A waiver shall be valid for 5 years.

Authorizations and waivers allowed by the commissioner under this subsection shall be in writing and specify the conditions for each exception.

(h) The department shall establish and maintain a public website to provide information about discharge notifications sent by permittees to the department under subsection (b). The website shall display information about any current outfall discharge in the commonwealth and any updates about a discharge within 24 hours after the department's receives such data. Information posted on the website from permittees shall be indexed by municipality, and by affected area water bodies and waterways, and shall be accessible for not less than 10 years after posting. The website shall display an online application, clearly identified and accessible, which the public may use to self-subscribe to receive electronic discharge notifications for specific area water bodies or waterways. The department shall share public notification request information it receives with respective permittees. An electronic link to access the website shall be conspicuously placed on the executive office of energy and environmental affairs' public website.

(i) The department shall issue an annual report by May 15th of each year, which shall provide a summary of all outfall discharge activity reported for the previous calendar year, including information about total discharge volumes, frequencies and pretreatment of effluent from any outfall discharging during such year into water bodies or waterways of defined regional areas. The report shall also contain discharge notifications received from permittees for the prior year; and information about projects or improvements that are planned, or being undertaken to

121 reduce the discharge of sewage from outfalls, and to better detect when discharging of such  
122 sewage occurs. Information about current permits granted to permittees to operate and maintain  
123 an outlet for the discharge of sewage and other pollutants into the commonwealth's waters, shall  
124 be included with each report. Annual reports shall be posted on the department's public website  
125 and shall be sent electronically to the department of public health and all municipal boards of  
126 health or their health departments. Information to access the report electronically, shall be sent  
127 by the department to its current public subscribers of discharge notifications.

128 (j) The department shall adopt regulations for the implementation and administration  
129 of this section not later than 8 months after the date of enactment of this act.

130 SECTION 2. Section 1, except for subsections (g) and (j) of said section, shall take  
131 effect 14 months after the enactment date of this act.