

# SENATE . . . . . No. 443

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*Anne M. Gobi*

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*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 solid waste disposal facilities.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/3/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/3/2017</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>2/3/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/3/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>2/3/2017</i>

# SENATE . . . . . No. 443

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By Ms. Gobi, a petition (accompanied by bill, Senate, No. 443) of Anne M. Gobi, Mike Connolly, James B. Eldridge, Todd M. Smola and other members of the General Court for legislation relative to solid waste disposal facilities. Environment, Natural Resources and Agriculture.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court  
(2017-2018)  
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An Act relative to solid waste disposal facilities.

*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  
2   2014 Official Edition, is hereby amended by striking out the section in its entirety, and inserting  
3   in place thereof the following:—

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           “Boards of Health of Affected Communities,” the boards of health of the municipality the  
7   facility is located in and any and all municipalities within one-half mile of the nearest edge of the  
8   proposed site.

9           "Department", the department of environmental protection.

10          "Facility", a sanitary landfill, a refuse transfer station, a refuse incinerator rated by the  
11   department at more than one ton of refuse per hour, a resource recovery facility, a refuse

composting plant, a dumping ground for refuse or any other works for treating, storing, or disposing of refuse.

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

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

No place in any city or town shall be maintained or operated by any person, including any political subdivision of the commonwealth, as a site for a facility, or as an expansion of an existing facility, unless, after a public hearing, such place has been assigned by all of the boards of health of affected communities in accordance with the provisions of this section, or, in the case of a facility owned or operated by an agency of the commonwealth, such place has been assigned by the department after a public hearing and unless public notice of such assignment has been given by the board of health or the department, whichever is applicable.

The determination by the boards of health of affected communities, or the department in the case of a state agency, of whether to assign a place as a site for a facility, or for the expansion of an existing facility, shall be based upon the site suitability criteria established by the department in cooperation with the department of public health pursuant to section one hundred and fifty A1/2, and any site assignment shall be subject to such limitations with respect to the extent, character and nature of the facility or expansion thereof as may be necessary to ensure

that the facility or expansion thereof will not present a threat to the public health, safety or the environment.

Any person desiring to maintain or operate a site for a new facility or the expansion of an existing facility shall submit an application for a site assignment to the boards of health of affected communities and simultaneously provide copies to the department and the department of public health. Any municipality within such one-half mile shall be afforded all the procedural rights of the municipality where the proposed site is located for the purpose of administrative review by the department or public hearing by the boards of health of the affected communities. The department shall, upon request by the board of health, provide advice, guidance and technical assistance to any boards of health of affected communities during its review of a site assignment application. The department and a board of health may enter into such other cooperative agreements in addition to those herein specified for the purpose of achieving an effective and expeditious review of the application. The boards of health of affected communities may charge reasonable application fees to cover the costs of conducting a hearing and reviewing technical data submitted to the boards. The application fees may also include a portion of the reasonable costs of other technical assistance. The application fees shall be established in accordance with rules and regulations promulgated by the department.

Within 60 days of receipt of the application, the department shall issue a report stating whether the proposed site meets the criteria established under section 150A1/2 for the protection of the public health and safety and the environment. Any such reports shall be made available to the public in a timely manner prior to any public hearing concerning the site application.

54           Within sixty days of receipt of said application, the department of public health shall  
55   review said application and comment thereon as to any potential impact of a site on the public  
56   health and safety. The department of public health may, in addition to its comment, make or  
57   cause to be made a public report, in writing, as it relates to an expansion of an existing facility or  
58   the assignment of a place as a site for a facility and provide said report with its written comments  
59   to the boards of health of affected communities. The department of public health shall coordinate  
60   and cooperate with the boards of health of affected communities on any matter relating to said  
61   public health report.

62           Within 30 days of the receipt of the department's report, the boards of health of affected  
63   communities shall hold a public hearing satisfying the requirements of chapter thirty A. Within  
64   forty-five days of the initial date of such hearing, the boards of health of affected communities  
65   shall render its decision on whether to assign a site for a facility, in writing, accompanied by a  
66   statement of reasons therefor and publish notice of said decision including determinations of  
67   each issue of fact or law necessary to the decision.

68           No assignment shall be granted by the local boards of health unless the department's  
69   report affirms that the siting criteria of said section one hundred and fifty A1/2 have been met by  
70   the proposed site. The boards of health of affected communities shall consider the concerns, if  
71   any, relative to the public health and safety cited by the department of public health. Each of the  
72   boards of health of affected communities shall assign a place requested by an applicant as a site  
73   for a new facility or the expansion of an existing facility so long as the applicant shows, based on  
74   the siting criteria established by said section one hundred and fifty A1/2, that the siting,  
75   operation and maintenance of the facility thereof would not result in a danger to the public health  
76   or safety or the environment.

Any person aggrieved by a decision of a board of health in assigning or refusing to assign a place as a site for a new facility, or expanding or refusing to expand an existing facility, except a resource recovery facility in operation or under construction prior to July first, nineteen hundred and eighty-seven, may, within thirty days of the publication of notice of such decision, appeal under the provisions of section fourteen of chapter thirty A. For the limited purposes of such an appeal, a local board of health shall be deemed to be a state agency under the provisions of said chapter thirty A and its proceedings and decision shall be deemed to be a final decision in an adjudicatory proceeding.

No facility shall be established, constructed, expanded, maintained, operated or devoted to any past closure as defined by regulation unless detailed operating plans, specifications, any public health reports and necessary environmental reports have been submitted to the department, the department has granted a permit for the facility and notice of the permit is recorded in the registry of deeds, or if the land affected thereby is registered land in the registry section of the land court for the district wherein the land lies. Within 120 days after the department is satisfied that the operating plans, specifications and reports are complete, the department shall make a decision granting or refusing to grant a permit. The permit may limit or prohibit the disposal of particular types of solid waste at a facility in order to protect the public health, promote reuse, waste reduction and recycling, extend the useful life of the facility, or reduce its environmental impact.

Every decision by the department granting or refusing to grant a permit shall be in writing and shall contain findings with regard to criteria established by the department. Any person aggrieved by the action of the department in granting or refusing to grant a permit may appeal that decision under section 14 of chapter 30A. For the limited purposes of any such

100 appeal, the department action shall be deemed to be a final decision in an adjudicatory  
101 proceeding.

102 Every person maintaining or operating a facility, including every political subdivision of  
103 the commonwealth, shall maintain and operate the same in such manner as will protect the public  
104 health and safety and the environment and shall at all times bear the burden of demonstrating that  
105 the operation and maintenance of a facility does not result in a threat to public health and safety  
106 and the environment. Upon determination that the operation or maintenance of a facility results  
107 in a threat to the public health and safety or the environment, such site assignment decision by  
108 the boards of health of affected communities may be rescinded or suspended or may be modified  
109 through the imposition or amendment of conditions, at any time after due notice and public  
110 hearing satisfying the requirements of section eleven of chapter thirty A by the boards of health  
111 affected communities or by the department. The boards of health of affected communities may  
112 charge reasonable review fees to cover the costs of conducting a hearing and reviewing technical  
113 data submitted to the boards to review the facility and determine whether a rescission,  
114 suspension or modification is necessary. The review fees may also include a portion of the  
115 reasonable costs of other technical assistance. The review fees shall be established in accordance  
116 with rules and regulations promulgated by the department.

117 Any person aggrieved by the decision of the board of health or the department in  
118 rescinding, suspending or modifying a site assignment may appeal said decision within thirty  
119 days of the publication of notice thereof pursuant to the provisions of section fourteen of chapter  
120 thirty A. For the limited purposes of such an appeal a local board of health shall be deemed a  
121 state agency under the provisions of said chapter thirty A and said decision shall be deemed to be  
122 a final decision in an adjudicatory proceeding and the decision of the department shall be

123 deemed to be a final decision in an adjudicatory proceeding. The department may rescind,  
124 suspend or modify the permit upon a determination that the operation or maintenance of the  
125 facility results in a threat to the public health and safety or to the environment. Any person  
126 aggrieved by such decision of the department may, within thirty days of the publication of notice  
127 thereof, appeal said decision pursuant to the provisions of chapter thirty A.

128         If a facility is a landfill owned or operated by any person other than a town or agency of  
129 the commonwealth, such person shall pay to the town where the facility is located an amount in  
130 accordance with the provisions of section twenty-four A of chapter sixteen for each ton of solid  
131 waste which is disposed of in such landfill. On or before the twentieth day of each month every  
132 such person shall file a return subscribed under the penalties of perjury with the board of health  
133 of the town in which such facility is located, on such form as the commissioner of environmental  
134 protection shall require for determination of the fee imposed by this paragraph. Said fee shall be  
135 due and payable on or before the due date of the return. Notwithstanding the foregoing, however,  
136 no fee shall be required or collected from an owner of a privately owned facility used by the  
137 owner thereof for the sole disposal of refuse generated from his own premises, and no such  
138 return need be filed.

139         No person shall dispose or contract for the disposal of solid waste at any place which has  
140 not been approved by the department pursuant to the provisions of this section or other  
141 applicable law.

142         The department shall allow any unlined landfill, owned or operated by a municipality or a  
143 solid waste district, to continue accepting refuse in compliance with existing approvals after  
144 January first, nineteen hundred and ninety-four; provided, that said municipality or district files a



145 statement of intent with the department on or before August fifteenth, nineteen hundred and  
146 ninety-three, as to its intent to continue in operation after January first, nineteen hundred and  
147 ninety-four; provided further, that any landfill for which a statement of intent has been submitted  
148 shall operate in accordance with applicable federal and state statutes, regulations, existing  
149 approvals, and provisions included herein. For purposes of this paragraph, the term "existing  
150 approval" shall include any permit, site assignment, plan approval, condition of operation, or any  
151 other applicable order or rule governing the operations of a landfill issued or granted by a  
152 municipality, the department, or any other agency of the commonwealth, or for which an  
153 application was pending as of May first, nineteen hundred and ninety-three, when granted in  
154 accordance with applicable regulations; provided, that no such application shall be denied  
155 arbitrarily and capriciously. Any municipality or district which does not file such a statement of  
156 intent shall cease accepting refuse no later than January first, nineteen hundred and ninety-four,  
157 and shall commence closure of the landfill under its control subject to the approval of the  
158 department in accordance with regulations promulgated by the department. On or before October  
159 first, nineteen hundred and ninety-three, the department shall compile and publish a list of all  
160 landfills for which a statement of intent has been filed and classify separately, as supported by  
161 scientific data, those landfills which pose a significant threat to the public health, safety, or the  
162 environment, those landfills which pose a potential threat, and those landfills for which current  
163 scientific data demonstrate little or no present discernible threat or for which current data is  
164 inconclusive. In classifying landfills, the department shall utilize all available scientific data,  
165 including, without limitation, any scientific data submitted by the municipality or the district and  
166 any additional scientific data generated by the department relative to an assessment of the actual  
167 or potential migration of leachate or other contaminants off the site of the landfill. The

168 department shall publish the list and accept public comment on said list. The department shall, if  
169 requested by November first, nineteen hundred and ninety-three, by the chief executive officer of  
170 a municipality or a district with a landfill on the list, participate in a public meeting in the  
171 municipality or district to be scheduled at mutual convenience within sixty days of such request.  
172 By February first, nineteen hundred and ninety-four, the department shall issue a final revised list  
173 taking into account any additional information generated or received through the comment and  
174 meeting process. The department shall work in conjunction with a municipality or a district to  
175 establish a schedule for the municipality or district to commence and complete closure of the  
176 landfill, considering the risks posed by the landfill and the fiscal capacity of the municipality or  
177 district to be incorporated in a consent order. If an agreement is not reached, the department may  
178 order any landfill which is classified as a significant threat to public health, safety or the  
179 environment to cease operations and commence closure, or take such other action as the  
180 department deems necessary; provided, that the municipality or district may request an  
181 adjudicatory hearing on such order pursuant to chapter thirty A. A municipality or district  
182 operating a landfill classified by the department as a potential threat shall no later than July first,  
183 nineteen hundred and ninety-four, install a groundwater monitoring system approved by the  
184 department, and shall report the results of such monitoring to the department no more than  
185 quarterly thereafter. A municipality or district operating a landfill for which the department has  
186 determined little or no present discernible threat exists or for which current data is inconclusive  
187 shall no later than January first, nineteen hundred and ninety-five, install a groundwater  
188 monitoring system approved by the department, and shall report the results of such monitoring to  
189 the department no more than quarterly thereafter. It shall be a violation of this section to falsify  
190 or falsely report any monitoring results. If the results of such groundwater monitoring or other

191 site specific assessment indicate that a landfill does pose a threat to public health, safety or  
192 environment, the department shall work in conjunction with a municipality or a district to  
193 establish a schedule for the municipality or district to commence and complete closure of the  
194 landfill, considering the risks posed by the landfill and the fiscal capacity of the municipality or  
195 district to be incorporated in a consent order. If an agreement is not reached, the department may  
196 order the municipality or district to cease operations and commence closure, or to take such other  
197 action as the department deems necessary; provided, that the municipality or district may request  
198 an adjudicatory hearing on such order pursuant to chapter thirty A. Nothing in this paragraph  
199 shall preclude the department from acting to address violations of this section, chapter twenty-  
200 one E or the regulations promulgated thereunder.

201 No site on which a facility was operated shall be conveyed or leased by the owner  
202 thereof, or be devoted to any use other than the operation of a facility, until notice that such  
203 facility was operated on the site is recorded in the registry of deeds, or if the land affected  
204 thereby be registered land, in the registry section of the land court for the district wherein the  
205 land lies. No site on which a facility was operated shall be used for any other purpose without the  
206 prior written approval of the department.

207 The department shall adopt and may from time to time amend rules and regulations, and  
208 the commissioner may issue orders, to enforce the provisions of this section. Any person,  
209 including any political subdivision of the commonwealth who violates this section, or any order  
210 issued pursuant thereto, or any rule or regulation promulgated hereunder (1) shall be subject to a  
211 fine of not more than twenty-five thousand dollars, or by imprisonment for not more than two  
212 years in a house of correction, or both, for each such violation; or (2) shall be subject to a civil  
213 penalty not to exceed twenty-five thousand dollars for each such violation. Each day each such

violation occurs or continues shall be deemed a separate offense. These penalties shall be in addition to any other penalties that may be prescribed by law.

The superior court shall have jurisdiction in equity to enforce the provisions of this section upon petition of the department or any aggrieved person.

Ash produced from the combustion of coal, including but not limited to fly ash and bottom ash, shall not be construed as refuse, rubbish, garbage, or waste material under this section when used as a raw material for concrete block manufacture, aggregate, fill, base for road construction, or other commercial or industrial purpose, or stored for such use. A location where such use or storage takes place may be constructed, established, maintained, and operated without being construed as a facility or site for a facility under this section, and no assignment or approval from the board of health or the department shall be required for such construction, establishment, maintenance, or operation; provided, however, the department shall have jurisdiction to determine, after notice and hearing, that the establishment or operation of such a location has created a nuisance condition by reason of odor, dust, fires, smoke, the breeding or harboring of rodents, flies or vermin, or other causes, and to prevent or order abatement thereof; and provided, further, that no final disposal of ash produced by the combustion of coal may be accomplished by burial of such ash in the ground, other than as base for road construction or fill, unless the place where such disposal takes place has been assigned for such disposal by the board of health and plans for such disposal have been approved by the department pursuant to this section. The department may waive the requirements of the preceding paragraphs of this section and the application of any regulations, or portions thereof, promulgated under the preceding paragraphs of this section as they may apply to the disposal by burial of ash produced by the burning of coal, and shall review and may approve the plans, site and method of storage upon a

237 determination that no nuisance is created and damage to the environment is minimal. Use of ash  
238 produced from the combustion of coal as intermediate cover material over rubbish at sanitary  
239 landfill facilities may be permitted by assignment of the board of health with approval of the  
240 department under this section.”