



An Act Relative to the Effective Enforcement of Municipal Ordinances and Bylaws

The Massachusetts Association of Conservation Commissions (MACC) is a nonprofit organization representing municipal agencies in every city and town in the state. We provide training, support and informational resources on environmental and land protection matters and endorse legislation that protects critical natural resources.

MACC supports *An Act Relative to the Effective Enforcement of Municipal Ordinances and Bylaws* (the Local Enforcement Bill) because it would provide cities and towns with new tools to help them collect penalties and fines from those found guilty of violating local laws; it would also, in effect benefit conservation commissions who administer wetlands bylaws and ordinances.

This bill would make two important changes to existing law:

The Local Enforcement bill would provide municipalities with the option to increase penalties and fines under local laws to a maximum of \$1,000 per offense – the first such increase in 30 years (the current law allows fines up to \$300). Cities and towns would not have unilateral authority to assess penalties or fines; they would need to present their case in the court of proper jurisdiction; monies collected from such fines go back to the municipality. In order to impose such fines, an individual city or town would first have to vote to adopt into local law, the “non criminal disposition statute” under Section 21D of Chapter 40 of the General Laws.

When a violator of a local law fails to appear in court and/or to pay a penalty or fine, a municipalities’ only recourse is to file a criminal complaint. This hurdle makes it difficult for municipalities to deter or punish serious violators of local laws. Further, if a municipality goes to court seeking equitable enforcement (e.g., an injunction to prevent a violation from continuing), under current law, the court lacks the authority to assess a penalty, even when there has been a willful violation of the law that harms the public health, safety or environment. The Local Enforcement bill would allow municipalities to seek the imposition of civil penalties in court when they obtain equitable enforcement of a local law or regulation. So a municipality could seek relief in the same court through one process.

The two identical bills are in the Joint Committee on Municipalities and Regional Government as S.1018 & H.1447.

If you have questions, please contact Linda Orel, Executive Director, Massachusetts Association of Conservation Commissions, 617-489-3930, Linda.Orel@maccweb.org.

Thank you.

An Act relative to the effective enforcement of municipal ordinances and bylaws

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The first paragraph of section 21 of chapter 40 of the General Laws, as appearing in the 2008 official edition, is hereby amended by striking out the words, “three hundred dollars” in line 5-6, and inserting in place thereof the words “one thousand dollars”

SECTION 2. The fifth paragraph of section 21D of chapter 40 of the General Laws, as appearing in the 2008 official edition, is hereby amended by striking out the words, “three hundred dollars” in lines 44-45 and inserting in place thereof the words “one thousand dollars”

SECTION 3. Section 21D of chapter 40 of the General Laws is hereby amended by inserting after the end of said section the following new tenth paragraph: --

Notwithstanding the foregoing provisions and any general or special law to the contrary, in any suit in equity brought in the superior court or the land court by any city or town, or any municipal agency, officer, board or commission having enforcement powers on behalf of such a city or town, to enforce the provisions of any lawfully enacted ordinance or bylaw, or any rule, regulation or order described in this section, the court, upon a finding that such violation occurred, may assess a civil penalty not to exceed one thousand dollars for each violation thereof. Civil penalties assessed under this paragraph shall be in addition to any equitable relief ordered by the court, and shall be paid to such city or town for such use as the city or town may direct. In considering any penalty to be assessed under this paragraph, the court shall consider (a) whether the violation was willful or negligent, (b) any harm to the public health, safety or environment resulting from the violation, (c) any economic benefit gained by the defendant as a result of the violation, (d) the cost to the city or town resulting from the violation, including its enforcement costs and reasonable attorneys fees, (e) any history of noncompliance by the defendant, and (f) whether the defendant made good faith efforts to cure or cease the violation of such ordinance or bylaw after the first notice thereof by such city or town.

SECTION 4. The second paragraph of section 7 of chapter 40A of the General Laws, as appearing in the 2008 official edition, is hereby amended by striking out the words “three hundred dollars” in lines 16-17, and inserting in place thereof the words “one thousand dollars”

SECTION 5. The third paragraph of section 7 of chapter 40A of the General Laws, as appearing the 2008 official edition, is hereby amended by inserting after the word “thereof” in line 49 the phrase “and, upon determination that such violations have occurred, may assess civil penalties therefore in accordance with the provisions of the tenth paragraph of section 21D of chapter 40 of the General Laws.