

Topic:	Environmental Impact Review Requirements
Resource Type:	Regulations
State:	Massachusetts
Jurisdiction Type:	State
Municipality:	N/A
Year (adopted, written, etc.):	2004
Community Type – applicable to:	Urban; Suburban; Rural
Title:	State of Massachusetts Environmental Impact Review Ordinance
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Abstract

Section sixty-one of chapter thirty requires all agencies to review, evaluate, and determine the impact on the natural environment of all works, projects, or activities conducted by the agencies and use all practicable means and measures to minimize damage to the environment. Section sixty-two defines “agency” to mean “an agency, department, board, commission or authority of the commonwealth, and any authority of any political subdivision which is specifically created as an authority under special or general law.” Any determination made by an agency must include a finding describing the environmental impact, if any, of the project and a finding that all feasible measures have been taken to avoid or minimize said impact. Such environmental impact report must be submitted to the secretary of environmental affairs, who will review the report according to section sixty-two c of this chapter.

Resource

MASS. GEN. LAWS ch. 30, § 61 (2004)

Determination of Environmental Impact; "Damage to the Environment" Defined

All agencies, departments, boards, commissions and authorities of the commonwealth shall review, evaluate, and determine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means and measures to minimize damage to the environment. Unless a clear contrary intent is manifested, all statutes shall be interpreted and administered so as to minimize and prevent damage to the environment. Any determination made by an agency of the commonwealth shall include a finding describing the environmental impact, if any, of the project and a finding that all feasible measures have been taken to avoid or minimize said impact.

As used in this section and section sixty-two, "damage to the environment" shall mean any destruction, damage or impairment, actual or probable, to any of the natural resources of the

commonwealth and shall include but not be limited to air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds, or other surface or subsurface water resources; destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks, or historic districts or sites. Damage to the environment shall not be construed to include any insignificant damage to or impairment of such resources.

MASS. GEN. LAWS ch. 30, § 62 (2004)

§ 62. Definitions as to Environmental Permits.

For the purposes of sections sixty-one to sixty-two H, inclusive, the following words shall have the following meanings unless the context otherwise requires:--

"Agency", an agency, department, board, commission or authority of the commonwealth, and any authority of any political subdivision which is specifically created as an authority under special or general law.

"Permit", a permit determination, order or other action, including the issuance of a lease, license, permit, certificate, variance, approval or other entitlement for use, granted to any person, firm or corporation, including trusts, voluntary association or other forms of business organizations by an agency for a project but shall not include a general entitlement to a person to carry on a trade or profession or to operate mechanical equipment which does not depend upon the location of such trade or operation.

"Person", a private person, firm or corporation, or any governmental entity which is not an agency.

"Project", work, project, or activity either directly undertaken by an agency, or if undertaken by a person, which seeks the provision of financial assistance by an agency, or required the issuance of a permit by an agency but shall not include a grant of aid for medical services or personal support, such as welfare or unemployment funds, to an individual or a third party on behalf of an individual.

MASS. GEN. LAWS ch. 30, § 62A (2004)

§ 62A. Determination of Need for Environmental Impact Report; Exception.

A person applying or intending to apply to an agency for a permit or for financial assistance for a project may, at any time prior to, but, in any event, shall no later than ten days after filing the first application for such permit or assistance notify the secretary of environmental affairs of the nature of the project and of such application, if any, on such forms as said secretary shall prescribe and shall transmit copies of said notification forms to such agency from which a permit or financial assistance is or may be sought. Any agency proposing a project may file said notification forms prior to the development of the project and shall file

said forms no later than the secretary of environmental affairs shall by regulation prescribe. Within thirty days after issuance of notice of the receipt of such notification, the secretary shall consult with the person or agency proposing the project and the agency, if any, from which a permit or financial assistance is or may be sought and shall issue a certificate stating whether an environmental impact report is required. If a report is required, the secretary with the cooperation of said person and agency shall, within the above mentioned thirty day period, limit the scope of the report to those issues which by the nature and location of the project are likely to cause damage to the environment. The secretary shall determine the form, content, level of detail and alternatives required for the report. In the case of a permit application to an agency from a private person for a project for which financial assistance is not sought the scope of said report and alternatives considered therein shall be limited to that part of the project which is within the subject matter jurisdiction of the permit. Any finding required by section sixty-one shall be limited to those matters which are within the scope of the environmental impact report, if any, required by this section.

In the case of a major and complicated project, the secretary of environmental affairs, with the agreement of the agencies and persons who are proposing, providing public financial assistance for or issuing permits for a project subject to sections sixty-two to sixty-two H, inclusive, may establish a specific procedure for evaluation and review of the environmental impacts of said project. This section shall not apply to the placing, maintaining, repairing or relocating of poles, wires, conduits, cables, pipes and associated fixtures by public utility companies under section seventy-one chapter one hundred and sixty-four and sections twenty-one to twenty-two, inclusive, of chapter one hundred and sixty-six.

MASS. GEN. LAWS ch. 30, § 62B (2004)

§ 62B. Projects Undertaken Directly by State Agency; Use of Public Funds; Contents of Environmental Impact Reports.

In the case of projects directly undertaken by an agency, the environmental impact report shall be prepared and submitted by the responsible agency. If two or more agencies are responsible, a joint report shall be prepared and submitted by the agency designated by the secretary of environmental affairs. In the case of projects which require a permit or financial assistance from an agency, said report shall be prepared and submitted by the person or agency seeking the permit or financial assistance.

Public funds made available for the purpose of design of or planning or undertaking a project subject to sections sixty-two to sixty-two H, inclusive, may be expended for the research, preparation, and publication of the report and expenses incidental thereto, and said funds may be transferred or otherwise may be made available to other agencies designated by the secretary of environmental affairs to evaluate the draft or final report.

An environmental impact report shall contain statements describing the nature and extent of the proposed project and its environmental impact; all measures being utilized to minimize environmental damage; any adverse short-term and long-term environmental consequences which cannot be avoided should the project be undertaken; and reasonable alternatives to the proposed project and their environmental consequences. The secretary

shall encourage agencies and persons to commence preparation of reports during the initial planning and design phase of projects. Said report shall be prepared and disseminated to inform the originating or permitting agency, reviewing agencies, the appropriate regional planning commission, the attorney general and the public of the environmental consequences of state actions and the alternatives thereto prior to any commitment of state funds for and prior to the commencement of the project if undertaken by any agency or prior to the issuance of any permit or grant of financial assistance for the project if undertaken by a person.

MASS. GEN. LAWS ch. 30, § 62C (2004)

§ 62C. Review of Environmental Impact Reports.

Any environmental impact report shall be submitted to the secretary of environmental affairs who shall issue public notice of the availability of such report.

A reviewing agency or person, and any agency which has jurisdiction by law or special expertise with respect to any environmental impact involved may submit written comments on any draft or final environmental impact report to the secretary of environmental affairs who shall affix any such comments which are timely received to his statement on such reports. Said reports and any comments submitted in review thereof shall be public documents.

No agency shall undertake a project which is not exempted by the provisions of any law and which may cause damage to the environment or grant a permit or financial assistance for such a project until sixty days after the secretary of environmental affairs issues such notice, provided that an agency or person may undertake research, planning, design and other preliminary work necessary to describe and evaluate such projects for the purposes of sections sixty-two to sixty-two H, inclusive.

There shall be a public and agency review period of thirty days from the notice of availability of any draft or final report, provided that the secretary of environmental affairs may extend the review period for a draft report on a major and complicated project for a period not to exceed thirty days. A statement of the secretary indicating whether or not in his judgment said report adequately and properly complies with the provisions of sections sixty-two to sixty-two H, inclusive, shall be issued within seven days after the public and agency review period. The approval or disapproval of said secretary of any such report shall not be required.

At least twice per month the secretary shall issue notice of all filings and of the availability of all reports received during the preceding half month, which notice shall be in such form as the secretary shall determine is reasonably suited to informing all interested agencies and persons of the receipt of such filings and the availability of such reports.

MASS. GEN. LAWS ch. 30, § 62D (2004)

§ 62D. Time for Action on Permit Applications.

Agencies shall act on permit applications within ninety days following issue of notice of availability of the final environmental impact report, within ninety days following issue of notice of the determination that a report is not required, or ninety days following the permit application, whichever is latest, unless otherwise provided by law.

MASS. GEN. Laws ch. 30, § 62E (2004)

§ 62E. When Environmental Impact Reports not Required.

With the approval of the secretary of the executive office having jurisdiction over an agency, or if an agency is not within an executive office, with the approval of such agency, the secretary of environmental affairs shall establish general and special categories of projects and permits which shall or shall not require environmental impact reports based upon the scope and duration of potential impacts from the nature, size and location of said projects or portions thereof which require permits.

MASS. GEN. Laws ch. 30, § 62F (2004)

§ 62F. Emergencies; Urban Renewal Projects.

A project may commence prior to compliance with sections sixty-two to sixty-two H, inclusive, if emergency action by a person or agency is essential to avoid or eliminate a threat to public health or safety, or a threat to any natural resources; provided, that wherever practicable, the agency or person shall obtain the prior approval of the secretary of environmental affairs. Following commencement of any such project, the agency or person shall promptly, but in any case within sixty days, commence compliance with the provisions of sections sixty-two to sixty-two H, inclusive.

In the case of an urban renewal project proposed under chapters one hundred and twenty-one A or one hundred and twenty-one B, the specific procedure under section sixty-two A may permit land acquisition and other actions required for land acquisition to take place prior to the publication of the final environmental impact report provided that the secretary has issued notice of availability of an interim environmental impact report which demonstrates to the satisfaction of said secretary that an urban renewal project may be carried out on the proposed land with appropriate constraints as may be necessary to minimize and prevent damage to the environment.

MASS. GEN. Laws ch. 30, § 62H (2004)

62H. Challenges to Need for, or Sufficiency of, Environmental Impact Report.

An agency or person intending to commence an action or proceeding alleging an improper determination of whether a project requires the preparation of an environmental impact report under section sixty-two A, shall first provide notice of intention to commence such

action or proceeding within sixty days of issuance of notice of such determination. An agency or person intending to commence an action or proceeding alleging that a final environmental impact report fails to comply with the requirements of sections sixty-two to sixty-two G, inclusive, shall first provide notice of intention to commence such action or proceeding within sixty days of issuance of notice of availability of said final environmental impact report pursuant to section sixty-two C. Said notices of intention shall be in such form as the secretary of environmental affairs shall prescribe, shall identify with particularity the issues to be considered in any such action or proceeding, shall be in lieu of the notice and waiting period required by section seven A of chapter two hundred and fourteen, and shall be provided to the attorney general, the agency or person proposing the project and the secretary of environmental affairs.

Any action or proceeding alleging an improper determination that a project requires the preparation of an environmental impact report under section sixty-two A shall commence no later than thirty days following the first issuance of a permit or grant of financial assistance by an agency or no later than sixty days after issuance of notice of such determination, whichever occurs later, for a private project, or no later than one hundred and twenty days after issuance of notice of such determination for a public project. Any action or proceeding alleging that a final environmental impact report fails to comply with the provisions of sections sixty-two to sixty-two G, inclusive, shall commence no later than thirty days following the first issuance of a permit or grant of financial assistance by an agency for a private project or no later than one hundred and twenty days after issuance of notice of availability of said final environmental impact report under section sixty-two C, for a public project.

No allegation shall be made in any action or proceeding under this section unless the matter complained of was raised at the appropriate point in the administrative review procedures; provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have raised it during such procedures or that the matter sought to be raised is of critical importance to the environmental impact of the project.

If a court determines that an agency or person proposing a project has knowingly concealed a material fact or knowingly submitted false information in any form or report required under sections sixty-two to sixty-two H, inclusive, limits on the manner and time in which actions or proceedings may be commenced shall not apply and the secretary of environmental affairs may require the preparation and review of such forms or reports as may be necessary to correct any deficient form or report.

The secretary of environmental affairs shall, after consultation with other secretaries of executive offices and with agencies not within executive offices, promulgate reasonable rules and regulations to carry out the purposes of sections sixty-two to sixty-two H, inclusive.

<http://www.mass.gov/legis/laws/mgl/30-61.htm>

<http://www.mass.gov/legis/laws/mgl/30-62.htm>

<http://www.mass.gov/legis/laws/mgl/30-62a.htm>

<http://www.mass.gov/legis/laws/mgl/30-62b.htm>

<http://www.mass.gov/legis/laws/mgl/30-62c.htm>

<http://www.mass.gov/legis/laws/mgl/30-62d.htm>

<http://www.mass.gov/legis/laws/mgl/30-62e.htm>

<http://www.mass.gov/legis/laws/mgl/30-62f.htm>

<http://www.mass.gov/legis/laws/mgl/30-62h.htm>

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