

**HOUSE . . . . . No. 04018**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Louis L. Kafka*

*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 passage of the accompanying bill:

**AN ACT ESTABLISHING A DEPARTMENT OF ENVIRONMENTAL PROTECTION APPEALS BOARD..**

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>

# HOUSE . . . . . No. 04018

By Mr. Kafka of Stoughton, a petition (subject to Joint Rule 12) of Louis L. Kafka and others relative to establishing a department of environmental protection appeals board. Environment, Natural Resources and Agriculture.

## The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

### AN ACT ESTABLISHING A DEPARTMENT OF ENVIRONMENTAL PROTECTION APPEALS BOARD..

*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 19 of chapter 21A of the General Laws, as appearing in the 2010 Official  
2 Edition, is hereby amended by inserting, after the word “meanings:”, the following definition:-  
3 “Appeals board”, the department of environmental protection appeals board, established pursuant  
4 to section 19G ½.
- 5 SECTION 2. Chapter 21A of the General Laws, as appearing in the 2010 Official Edition, is  
6 hereby amended by inserting, after section 19G, the following section:-  
7 Section 19G ½ There is hereby established within the executive office of energy and  
8 environmental affairs a board to be known as the department of environmental protection appeals  
9 board. The appeals board shall consist of five members, the chair who shall be the secretary of  
10 the executive office of energy and environmental affairs or his designee; provided, however, that

11 the designee shall be a full-time employee of the office at all times while so designated, and such  
12 designee shall not be a member of the board of registration of hazardous waste site cleanup  
13 professionals. The governor shall appoint the other four members of the appeals board to 2 year  
14 terms, one member shall be a licensed hazardous waste site cleanup professional, one member  
15 from a statewide organization that promotes the protection of the environment, one member from  
16 a labor organization who is knowledgeable with respect to issues involving response to releases  
17 of oil and hazardous materials, and one member shall be a hydrologist, who is knowledgeable  
18 with respect to issues involving response to releases of oil and hazardous materials and  
19 environmental protection; provided, however, that none of the appointees are members of the  
20 board of registration of hazardous waste site cleanup professionals.

21 Each of the 4 members of the appeals board appointed by the governor whose term has expired  
22 shall continue to be a member of the appeals board until the member's successor is appointed  
23 and qualified, at which time the successor shall complete the unexpired portion of the term.

24 Each of the 4 members of the appeals board appointed by the governor shall serve without  
25 compensation.

26 The board may make such rules or by-laws, not inconsistent with law, as it may deem necessary  
27 in the performance of its duties and may establish forms of appeals and petitions, and reasonable  
28 fees for the filing thereof. The board shall hold only such meetings as are required to perform its  
29 duties. Time, place and notice of all meetings shall be required by rules or by-laws. A majority of  
30 the board, constituted as above provided, may transact business, but a lesser number may adjourn  
31 from time to time.

32 No member shall act as a member of the board, or vote as such, in connection with any matter as  
33 to which his private right, distinct from the public interest, is immediately concerned.

34 The secretary of the executive office of energy and environmental affairs, as chair, shall employ  
35 such staff and other persons as are required to assist the appeals board, or both, in the  
36 performance of its functions and duties pursuant to sections 19 through 19 J, inclusive.

37 SECTION 3. Said chapter 21A is hereby further amended by striking out section 19H, as  
38 appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

39 Section 19H. Whoever is aggrieved by a determination by the board of registration of hazardous  
40 waste site cleanup professionals or other person charged with the enforcement of the rules and  
41 regulations of such board, may, within 10 days after the service of notice thereof, appeal  
42 therefrom, to the appeals board. The appeals board shall, after such notice as it may direct, hold a  
43 public hearing on such appeal at a time and place to be fixed by it, but not later than 30 days after  
44 the entry of such appeal, unless such time shall be extended by agreement with the appellant. The  
45 appellant may appear in person or by agent or attorney at such hearing. The appeals board shall  
46 hear all pertinent evidence and determine the facts, and shall issue an appropriate decision or  
47 order reversing, affirming or modifying in whole or in part the determination. Such decision or  
48 order of the board shall be made within a reasonable time, and within 45 days after such hearing,  
49 unless such time is extended by like agreement. The board shall forthwith send by registered  
50 mail a copy of its decision or order to the interested parties.

51 Any person aggrieved by a decision or order of the appeals board, whether or not a party to the  
52 proceeding may, within 30 days after receipt of notice of such decision or order obtain judicial  
53 review thereof pursuant to chapter 30A. Said court shall hear all pertinent evidence and

54 determine the facts and may annul such decision if it is found to exceed the authority of said  
55 board, or may make such other decree as justice may require as set forth in section 19I. Costs  
56 shall not be allowed against the appeals board unless it appears to the court that said board acted  
57 with gross negligence or in bad faith or with malice in making the decision or order appealed  
58 from. Costs shall not be allowed against a party appealing from the decision or order of such  
59 appeals board unless it appears to the court that the appellant acted in bad faith or with malice in  
60 making the appeal to the court.

61 Compliance with any determination of the board of registration of hazardous waste site cleanup  
62 professionals or other person charged with the enforcement of the rules and regulations of such  
63 board shall be excused pending the final determination of any appeal therefrom taken under this  
64 section; provided, however, that if, in making a determination subject to this section, the appeals  
65 board finds that an imminent threat to public health or safety or to the environment could result  
66 during the pendency of a judicial review, the board may order that the determination become  
67 provisionally effective and enforceable immediately upon issuance, and shall remain so  
68 notwithstanding and until the conclusion of the judicial review, unless the appeals board orders  
69 otherwise during the course of the proceeding.