

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Frank I. Smizik

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 RELATIVE TO SUSTAINABLE WATER RESOURCES.

PETITION OF:

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO SUSTAINABLE WATER RESOURCES.

1 *Whereas*, water is vital to public health, safety, welfare and the environment in the Commonwealth; and

2

3 *Whereas*, the Commonwealth's water resources are public resources that require sustainable
4 management practices for economic growth, the well being and safety of our citizens, and protection of
5 the natural environment; and

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7 *Whereas*, it is the policy of the Commonwealth to protect the chemical, physical and biological integrity
8 of its surface waters and their beneficial uses for the citizens of Massachusetts; and

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10 *Whereas*, natural stream flows and adequate water levels are necessary for protection and procreation
11 of fish and wildlife; maintenance of aquatic ecosystems, support of recreational activities; preservation
12 of aesthetic values; protection of groundwater and public water supplies; the reduction of pollution; and
13 to guard against climate change impacts; and

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15 *Whereas*, it is in the public interest to adopt criteria and regulations to protect and restore stream flows
16 and water levels, and for communities to create sustainable water resource funds.

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

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22 SECTION 1. Section 2 of Chapter 21G of the General Laws, as appearing in the 2006 Official Edition, is
23 hereby amended by inserting after "Department" the following definition:-

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25 "Division", the division of fisheries and wildlife.

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27 SECTION 2. Section 3 of said chapter 21G, as so appearing, is hereby further amended by inserting, in
28 line 67, after the phrase "chapter twenty-one", the following sentences:—

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30 "Pursuant to chapter 30A, the department, after consultation with the advisory committee and with the
31 approval of the commission and the director of the division, shall adopt, and thereafter from time to
32 time may amend, regulations establishing standards for restoring and maintaining stream flows, water
33 levels and hydrologic regimes that are protective of natural aquatic life for all rivers and streams in the
34 commonwealth and ensure a balance among competing water withdrawals and uses, as well as
35 preservation of the water resource itself. Said regulations, which shall incorporate the criteria
36 established by the division pursuant to section 42A of chapter 131, shall be promulgated within 1 year of
37 the division's establishment of the criteria and shall be used in the administration of this chapter. The
38 department's regulations shall allow the department in consultation with the division to establish such
39 standards protective of natural aquatic life for a specific river or stream."

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41 SECTION 3. Section 7 of said chapter 21G, as so appearing, is hereby further amended by inserting at the
42 end thereof the following sentence:-

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44 (11) All feasible means to avoid, or if not possible, to minimize and mitigate impacts of the withdrawal
45 on the natural environment have been taken.

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47 (12) Consistency with the standards adopted by the department pursuant to section 3.

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49 SECTION 4. Section 8 of said chapter, as so appearing, is hereby further amended by inserting, in lines
50 21-22, after word "applicant" the following sentences:-

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52 (10) A demonstration that all feasible means to avoid, or if not possible, to minimize and mitigate
53 impacts of the withdrawal on the natural environment have been taken or will be taken. Mitigation
54 shall occur upstream in the same sub-basin as the withdrawal to the maximum extent practicable, and
55 within the same basin as the withdrawal if such impacts cannot be offset in the same sub-basin.
56 Permittees may enter into agreements with third parties, including the Department of Fish and Game, to
57 implement mitigation required herein.

58 SECTION 5. Section 38 of chapter 40 of the General Laws, as appearing in the 2006 Official Edition, is
59 hereby amended by inserting, after the second paragraph, the following sentences:-

60 Notwithstanding any general or special law to the contrary, no source of water supply and no lands
61 necessary for protecting and preserving the purity of the water shall be sold by a city or town to a
62 private corporation without first obtaining the advice and consent of the department of environmental
63 protection.

64 SECTION 6. Section 39J of chapter 40 of the General Laws, as appearing in the 2006 Official Edition, is
65 hereby amended by inserting, in line 15, after the word " protection," the following words:- "all costs or
66 measures to ensure the long-term sustainability of the water supply,".

67 SECTION 7. Said chapter 40, as so appearing, is hereby further amended by inserting after section 39L
68 the following section:-

69 Section 39M. Establishment of Sustainable Water Resource Fund.

70 Notwithstanding any general or special law to the contrary, a city, town, board of water or sewer
71 commissioners, officers performing like duties, or water or sewer district may collect a reasonable fee to
72 be used exclusively to offset and remedy impacts of water withdrawals, sewerage, or impairment of
73 recharge of groundwater on the natural environment through depletion of ground or surface waters,
74 and to sustain the quantity, quality and ecological integrity of waters of the commonwealth. Such
75 measures for water return or water loss prevention shall include without limitation, local recharge of
76 stormwater and wastewater, reuse of water, removal of infiltration and inflow, water savings achieved
77 by retrofitting existing development with low impact development methods or water-saving devices,
78 dam removal and land acquisition only for 1) wellhead protection of a public water supply or 2) for siting
79 a decentralized wastewater treatment facility.

80 The fee, which may be based on retaining within the basin or saving at least one gallon, but no more
81 than ten gallons, for every gallon of increased water or sewer demand, or net impairment of recharge
82 shall be assessed in a fair and equitable manner, and separate uniform fees may be established for
83 residential and commercial uses.

84 All such fees shall be deposited in a separate account classified as a "Sustainable Water Resource Fund."
85 This Fund shall not be used for any purpose not provided in this section. The Fund may also receive
86 monies from public and private sources as gifts, grants, and donations to further water conservation,
87 water return or water loss prevention; from the federal government as reimbursements, grants-in-aid or
88 other receipts on account of water infrastructure improvements; or fines, penalties or supplemental
89 environmental projects. Any interest earned from whatever source shall be credited to and become
90 part of said Fund.

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92 SECTION 8. Chapter 131 of the General Laws, as appearing in the 2006 Official Edition, is hereby
93 amended by inserting, after section 42, the following section:-

94
95 Section 42A. The division shall establish criteria to restore and maintain stream flows, water levels and
96 hydrologic regimes that are protective of natural aquatic life for all rivers and streams in the
97 commonwealth. Such criteria shall be based on the best scientific evidence and methodology available
98 and shall be based on and provide for the natural variation of stream flows, and water levels adequate
99 to ensure their chemical, biological and physical integrity. Within one year of the effective date of this
100 act, the division shall adopt these criteria for all rivers and streams.

101 SECTION 9. Section 44 of chapter 253 of the General Laws, as appearing in the 2006 Official Edition, is
102 hereby amended by inserting, after line 2 the following definition:-

103 "Abandoned", a dam that has no identifiable owner or a dam whose owner fails to respond to the
104 owner's obligations pursuant to sections 44 through 48 inclusive. Abandonment of a dam shall not
105 relieve the dam owner of liability under this act for maintenance of the dam or liability associated with
106 property damage caused by the dam under the laws of the commonwealth. All persons liable pursuant
107 to this section for which the commonwealth incurs costs for inspection, repair or removal of an
108 abandoned dam shall be liable to the commonwealth for such costs as set forth in this chapter.

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110 SECTION 10. Said section 44 of said chapter 253, as so appearing, is hereby further amended by
111 inserting in line 9 after the word "any" the following words:- "man-made".

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113 SECTION 11. Said section 44 of said chapter 253, as so appearing, is hereby further amended by

114 inserting in line 17 the after the word "safety" the following words:- "or which could cause significant
115 harm to the aquatic or riparian ecosystem".

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117 SECTION 12. Said section 44 of said chapter 253, as so appearing, is hereby further amended in line 32
118 by striking the words "environmental management" and inserting in place thereof the following words:-
119 "conservation and recreation".

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121 SECTION 13. Said section 44 of said chapter 253, as so appearing, is hereby further amended by adding
122 after the definition of "Owner" the following definition:- "Remove," or "Removal," the controlled
123 dismantlement or breaching of a dam to the extent that water is not impounded or diverted by the dam
124 and fish passage is no longer impeded and which is dismantled in compliance with applicable laws and
125 regulations of the commonwealth; provided, that a minimal degree of impoundment needed to retain
126 wetlands and open water conditions may be allowed following controlled dismantlement or breaching
127 of a dam, while removing any impediment to fish passage or alleviating threats to safety or property.

128 SECTION 14. Said section 44 of said chapter 253, as so appearing, is hereby further amended by striking,
129 in line 10 the words "25 feet" and inserting in place thereof the following words:- "6 feet".

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131 SECTION 15. Said section 44 of said chapter 253, as so appearing, is hereby further amended by striking,
132 in line 15, the word "50" and inserting in place thereof the following word:- "15".

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134 SECTION 16. Section 46 of said chapter 253, as so appearing, is hereby amended in line 14 by inserting
135 after the word "unsafe" the following words:- "or abandoned".

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137 SECTION 17. Said section 46 of said chapter 253, as so appearing, is hereby further amended in line 22 by
138 inserting after the words "bring the dam into a safe condition" the following words:- "or remove the
139 dam".

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141 SECTION 18. Section 46A of said chapter 253, as so appearing, is hereby amended in line 1 by inserting
142 after the word "removed" the following word:- "repaired,"

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144 SECTION 19. Said section 46A of said chapter 253, as so appearing, is hereby further amended by
145 striking, in line 7, the words "life and property," and inserting in place thereof the following words:-
146 "safety, property or the environment."

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148 SECTION 20. Section 47 of said chapter 253, as so appearing, is hereby amended by inserting in line 7
149 after the word "department." the following sentence:- "Such action may include removal of the dam".

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151 SECTION 21. Section 47 of said chapter 253, as so appearing, is hereby amended by striking, in line 22,
152 the word "\$500" and inserting in place thereof the following words:- "up to \$25,000 dollars."

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SECTION 22.

(a) The Commissioner of the Department of Conservation and Recreation (hereinafter referred to as the commissioner), in conjunction with the Commissioner of the Department of Fish and Game, the Division of Fisheries and Wildlife and the Riverways Program, shall on or before December 1, 2010, complete a detailed inventory of all dams on public and private property in the Commonwealth. The commissioner shall update such dam inventory every five years. The commissioner shall submit the inventory in a report to the Joint Committee on Environment, Natural Resources and Agriculture and to the Senate and House Committees on Ways and Means.

This report shall include the following detailed information:

- (1) A comprehensive list of the person, agency, municipality, or entity that owns and operates every dam and the location of every dam where such ownership or operation has been registered with the office of dam safety;
 - (2) A list of specific owners who have failed to meet regulatory requirements, including but not limited to, registration and inspection requirements;
 - (3) A classification of the status of all hazardous dams that pose a threat to public health, safety, welfare, and property and when or whether they have been repaired;
 - (4) A comprehensive list of dams that no longer serve their original purpose or any significant public use and should be considered for removal.
 - (5) A comprehensive list of dams that are abandoned as defined in section 44 of chapter 253 of the General Laws.
 - (6) A prioritized, comprehensive list provided by the office of geographic and environmental information of all dams, including ownership and condition, whose existence, condition or operation impact freshwater animal and plant and resident or migratory fish species habitat or movement to be prepared in consultation with the department of fish and game , including the natural heritage and endangered species program.
- (b) The Commissioner shall ensure that an emergency action plan is developed for all high hazard dams and significant hazard dams, as defined in regulation. An emergency action plan template shall be developed and available for all dam owners. The commissioner shall ensure that necessary local and state dam safety officials have immediate access to such plans in the event of a potential dam failure.
- (c) The Commissioner shall develop an inspection schedule, as required by dam safety regulations, to ensure that all high hazard, significant hazard, as low hazard dams, as defined in regulation, are inspected no less than every five years.

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196 (d) The Commissioner shall review the hazard classifications of all dams at least every five years, or if
197 and when new development is constructed near existing dams, to ensure the accuracy of the dam
198 classification.

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200 (e) The Secretary of the Executive Office of Energy and Environmental Affairs shall publish a written
201 guidance to streamline the regulatory permitting process for dam removal by December 31, 2010.

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203 (f) The secretary of the executive office of energy and environmental affairs shall ensure capital funds
204 are available for dam assessment, repair and removal of all dams statewide.

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206 (g) The secretary of the executive office of energy and environmental affairs shall create and implement
207 a \$40,000,000 fund for private, state, and municipal dam owners to inspect, repair, and remove dams,
208 with the assistance of the secretary of administration and finance. Such fund shall be paid for through
209 the capital budget.