

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Martha M. Walz

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 to protect groundwater levels.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martha M. Walz	8th Suffolk
Byron Rushing	9th Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROTECT GROUNDWATER LEVELS.

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 2 of chapter 21A of the General Laws, as appearing in the 2006 Official
2 Edition, is hereby amended by inserting after clause (30) the following:

3 (31) participate in a City/State Groundwater Working Group as described in a memorandum of
4 understanding, as it may be amended from time to time, entered into as of the fifteenth day of
5 September 2005 by the office, certain state authorities, the city of Boston, certain city of Boston
6 agencies and commissions, and the Boston Groundwater Trust.

7

8 SECTION 2. Section 8 of chapter 21A of the General Laws is hereby amended by inserting, after
9 the first paragraph, the following paragraph:

10

11 The department of environmental protection shall be vested with all the powers and duties which
12 relate to groundwater supply and groundwater protection necessary to implement the provisions
13 of chapter 21 O, including the promulgation of all necessary and appropriate regulations. The
14 department of environmental protection shall, in its sole discretion, charge an existing bureau
15 with responsibility to implement the provisions of chapter 21 O or create a new bureau for that
16 purpose.

17 SECTION 3. Massachusetts Groundwater Protection Act

18 The General Laws are hereby amended by inserting after chapter 21 N the following chapter:

19 CHAPTER 21 O
20 MASSACHUSETTS GROUNDWATER PROTECTION ACT.

- 21 (a) Short Title. This chapter shall be known and may be cited as the "Massachusetts
22 Groundwater Protection Act".
- 23 (b) Purpose. The purpose of the Massachusetts Groundwater Protection Act is to protect
24 structures supported by wooden pilings from damage due to lowered groundwater.
- 25 (c) Definitions. As used in this chapter, the following words shall, unless the context
26 clearly indicates otherwise, have the following meanings:
- 27 "Act", the Massachusetts Groundwater Protection Act.
- 28 "Basement", an enclosed structure underneath a building, the floor of which is, in
29 whole or in part, below the adjacent ground surface.
- 30 "Board", the Groundwater Protection Board established pursuant to subsection (j) of
31 this chapter.
- 32 "Bureau Representative", an official from the Department charged with investigating
33 potential causes of groundwater drawdown problem upon petition to the Board.
- 34 "City/State Groundwater Working Group", the state and other authorities, agencies,
35 and departments that are signatories to the Memorandum of Understanding dated
36 September 15, 2005, and who have been active participants in the quarterly meetings
37 held subsequently, and also including subsequent signatories.
- 38 "Covered Community", shall have the meaning set forth in section (e)(1) of this
39 chapter.
- 40 "Department", the Department of Environmental Protection.
- 41 "Groundwater", all water beneath the surface of the ground, whether wholly or partly
42 within the commonwealth.
- 43 "Impacted Area", an area within a Covered Community where buildings or other
44 structures are known or suspected to be supported by wooden pilings.
- 45 "Infrastructure Owner or Operator", any person who owns, operates or maintains
46 Underground Infrastructure located within the commonwealth.
- 47 "Local Agency", the entity within a Covered Community designated to carry out the
48 applicable provisions of this chapter, including any department, board, commission,
49 division, authority, or other entity within a city or town, or any agency or political
50 subdivision thereof.

51 "Monitoring Well", an excavation, pipe, or underground structure designed and
52 installed for the purpose of measuring groundwater levels.

53 "Other Building Owner", any person who owns a building within the commonwealth
54 and is not classified as a "Residential Building Owner" as defined by this chapter.

55 "Owner or Operator", any Residential Building Owner, Other Building Owner, or
56 Underground Infrastructure Owner or Operator.

57 "Person", any agency or political subdivision of government, any public or private
58 corporation or authority, any natural person, individual, trust, firm, joint stock
59 company, partnership, association or other entity, and any officer, employee, or agent
60 of such person.

61 "Residential Building Owner", any person who owns a residential dwelling. A
62 condominium association shall be considered a Residential Building Owner for the
63 purpose of this chapter.

64 "Recharge" or "Recharging", the replacement of groundwater through the use of a
65 Recharge Well or other underground structure or system designed, constructed, and
66 installed for the purpose of conveying water into the ground.

67 "Recharge Well", an excavation, perforated pipe, or porous underground structure,
68 such as a drywell or leaching pit, trench, or gallery, designed and installed for the
69 purpose of Recharging groundwater.

70 "State Agency/Agencies", entities or instrumentalities of state government, including
71 but not limited to all departments, boards, commissions, divisions, authorities, or
72 other such organizations established by the Commonwealth.

73 "Sump Pump", a mechanism that discharges local groundwater to a sewer or other
74 conveyance.

75 "Underground Infrastructure", any subsurface installation other than a Residential
76 Building or Other Building, such as piping and conduits, tunnels, depressed
77 roadways, railways, walkways, and Basements, including those owned, operated or
78 maintained by public entities or private parties.

79 "Wooden pilings", tree trunks or other wooden supports driven into soil to provide a
80 base upon which buildings or other structures are constructed.

81 (d) Powers and Duties of the Department.

82 (1) Within 90 days from the effective date of this chapter, the Department shall
83 develop and implement a plan for the staffing, equipping and funding of its
84 program under this chapter.

- 85 (2) The Department shall develop and adopt regulations to effectively plan and
86 manage groundwater and for the administration of this chapter as necessary
87 and proper to ensure an adequate supply of groundwater for the purpose of
88 sustaining and protecting existing and new structures supported by wooden
89 pilings within the commonwealth.
- 90 (i) Such regulations shall be designed to protect the natural supply of
91 groundwater and maintain stable groundwater levels to protect
92 structures that now depend on sufficient groundwater levels for
93 structural support; to assure comprehensive and systematic planning
94 and management of water withdrawals impacting groundwater levels
95 in Impacted Areas throughout the commonwealth; and to remedy
96 damage resulting from exposure caused by lowered groundwater to
97 buildings and other structures supported by wooden pilings.
- 98 (ii) The Department shall establish a mechanism for monitoring
99 groundwater levels impacted by leaking Underground Infrastructure,
100 Basements, and other sources of groundwater drawdown.
- 101 (3) The Department shall promulgate final regulations within 180 days of the
102 effective date of this chapter establishing the criteria, standards and
103 procedures to be followed in making the applicability determinations
104 consistent with the provisions of subsection (e)(1).
- 105 (4) Within 180 days of the effective date of this chapter, the Department shall
106 adopt, and thereafter from time to time may amend, standards and regulations
107 on the enforcement of the provisions of this chapter.
- 108 (5) The Department shall have the authority to require State Agencies and Local
109 Agencies to: provide requested information from building permits and other
110 historical records, in consultation with local transportation
111 departments, historical research organizations, and historical preservation
112 groups; conduct field monitoring, testing and inspections in order to identify
113 reporting limits; administer and enforce the Department's regulations adopted
114 pursuant to this chapter; report instances of noncompliance; and assess and
115 collect permit fees, and fines for noncompliance and nonpayment of fees and
116 permit fees authorized by this chapter.
- 117 (6) The Department shall coordinate with and provide oversight of Local
118 Agencies to effectuate the obligations imposed upon Local Agencies under
119 this Act, and shall monitor Local Agencies' compliance with all applicable
120 provisions, including oversight of Local Agencies and their responsibilities
121 under this chapter to regulate the use of sump pumps and the administration of
122 construction permits involving groundwater removal.
- 123 (7) As may be necessary from time to time to carry out the purposes of this
124 chapter, the Department may acquire real property, or any interest therein, by

125 purchase, gift or lease, or by eminent domain under the provisions of chapter
126 seventy-nine, and may conduct construction for the purpose of Recharging
127 local groundwater.

128 (8) The Department shall coordinate with and oversee the establishment by Local
129 Agencies of fees that shall be imposed upon any Person who pumps or
130 otherwise removes groundwater within a Covered Community in connection
131 with activities including, but not limited to, construction, excavation,
132 renovation, operation or other groundwater removal.

133 (9) The Department shall promulgate regulations governing the issuance of
134 groundwater removal permits for any construction, excavation, renovation,
135 operation or other groundwater removal activities being conducted within an
136 Impacted Area. Said regulations shall set forth the criteria, standards and
137 procedures for issuing groundwater removal permits and shall establish a
138 schedule for groundwater removal fees. Upon the effective date of the
139 Department's regulations, no groundwater shall be removed from any
140 groundwater source within an Impacted Area a groundwater removal permit
141 obtained from the Department. Said regulations shall further provide, at a
142 minimum, that:

143 (i) The permitting program established shall be administered by the Local
144 Agency designated by each Covered Community pursuant to
145 subsection (e) of this chapter;

146 (ii) Any Person who pumps or otherwise removes groundwater in
147 connection with any construction, excavation, renovation, operational,
148 or other activities within the boundaries of an Impacted Area shall be
149 subject to the permitting program; the failure of any Person who is
150 subject to the permitting program to comply with the requirement to
151 obtain a permit shall subject said Person to enforcement pursuant to
152 subsection (e)(5); each Local Agency shall provide notice to all
153 property owners within Impacted Areas of the measures they will need
154 to undertake to comply;

155 (iii) Each permit issued pursuant to this subsection shall require as a
156 condition to the permit the Recharge of groundwater being removed to
157 the maximum extent feasible;

158 (iv) Each permit holder shall pay a groundwater removal fee established by
159 the applicable Local Agency; in the event that groundwater is directed
160 into a local Recharge Well, groundwater removal fees shall not be
161 assessed or collected, but said Person shall remain subject to the
162 permitting program and the requirement to obtain a permit; and

163 (v) The uniform system of groundwater removal fees established by the
164 Department pursuant to this section shall be linearly proportional to

165 the volumes of groundwater removed, which shall be monitored and
166 recorded using a utility meter.

167 (10) The Department is empowered to require from time to time reports, studies,
168 and analyses by Local Authorities on whether this Act should be amended to
169 address other means of maintaining groundwater sufficiency, including, but
170 not limited to, Recharge from sidewalks, parking areas, and roof drains.

171 (11) The Department shall establish and administer various funds as set forth
172 herein.

173 (i) The Department is hereby authorized to establish a Groundwater
174 Protection Fund.

175 (ii) The Department is hereby authorized to establish a Groundwater
176 Protection Loan Fund.

177 (iii) The Department is hereby authorized to establish a Groundwater
178 Protection Remedial Fund, which shall have a funding source separate
179 from and independent of the Groundwater Protection Fund.

180 (iv) All fees, fines, and other monies collected pursuant to this chapter
181 shall be placed into the Groundwater Protection Fund.

182 (v) Within 180 days from the effective date of this chapter, the
183 Department shall establish rules for disbursement of the funds from the
184 Groundwater Protection Fund, which shall include provisions for the
185 periodic disbursement in equal portions to: (i) the Department for its
186 administrative costs in carrying out the provisions of this chapter;
187 (ii) Local Agencies within Covered Communities for carrying out their
188 administrative and enforcement responsibilities pursuant to the
189 provisions of this chapter; and (iii) the Groundwater Protection Loan
190 Fund.

191 (vi) Within 180 days from the effective date of this chapter, the
192 Department shall develop rules for the disbursement of low-cost loans
193 from the Groundwater Protection Loan Fund to private property
194 owners which apply for such monies to install a Recharge Well (or
195 wells).

196 (vii) Within 180 days from the effective date of this chapter, the Department
197 shall promulgate regulations for the funding and administration of the
198 Groundwater Protection Remedial Fund.

199 (e) Duties and Obligations of Covered Communities.

200 (1) Applicability

201 (i) The requirements of this section shall apply to all cities and towns that
202 determine, consistent with the provisions of this chapter, that buildings
203 or other structures located within their duly constituted boundaries are
204 supported by wooden pilings that are structurally dependent on
205 coverage by groundwater. These cities and towns shall be designated
206 as Covered Communities.

207 (ii) All cities and towns shall make the applicability determination
208 required under this subsection and report to the Department within one
209 year of the effective date of this chapter. Such determination shall be
210 made by majority vote of the city council or town meeting.

211 (iii) Any legal resident of said city or town shall have the right to petition
212 the Groundwater Protection Board for review of the applicability
213 determination made by a city or town pursuant to the provisions of this
214 section if such city or town determined that buildings or other
215 structures located within its duly constituted boundaries are not
216 supported by wooden pilings that are structurally dependent on
217 coverage by groundwater..

218 (iv) A Local Agency within each Covered Community shall be charged
219 with the responsibility of complying with the applicable requirements
220 of this chapter.

221 (v) The permitting program shall provide for an exception for emergency
222 water removal, including the use of sump pumps, caused by extreme
223 weather events. A permit shall not be required and fees shall not apply
224 for fourteen days following the extreme weather event.

225 (2) Impacted Areas

226 (i) Each Covered Community shall identify Impacted Areas where
227 buildings or other structures are known or suspected to be supported
228 by wooden pilings and are therefore potentially subject to damage due
229 to lowered groundwater.

230 (ii) Each Covered Community shall monitor the local levels of
231 groundwater in Impacted Areas. Monitoring may be accomplished
232 using new or existing Monitoring Wells or other techniques to monitor
233 local levels of groundwater.

234 (iii) Each Covered Community shall publish and update at least quarter-
235 annually a map showing groundwater levels in Impacted Areas.

236 (3) Certification Program. Each Covered Community shall keep a record of the
237 certifications to be made by property owners at the time of sale of each
238 property sold within the boundaries of an Impacted Area as required by
239 section (f).

240 (4) Construction Permits. Using regulations developed by the Department, each
241 Covered Community shall review applications for and grant safe-limit,
242 limited-duration groundwater removal permits for construction projects.

243 (5) Enforcement. Each Covered Community is hereby authorized to collect fees
244 pursuant to this chapter, and is hereby authorized to adopt bylaws or
245 ordinances providing for enforcement and penalties against Residential
246 Building Owners, Other Building Owners, and Owners and Operators of
247 Underground Infrastructure that are consistent with the Department's
248 regulations issued pursuant to this chapter.

249 (f) Sump Pump Removal Program.

250 (1) Twelve months from the effective date of this chapter, the following
251 requirements shall apply to all Residential Building Owners within an
252 Impacted Area and shall be met prior to the closing of a sale of any parcel of
253 property located within the boundaries of an Impacted Area.

254 (i) Each Residential Building Owner within an Impacted Area shall
255 ascertain whether a sump pump is present on such property. In the
256 event that no sump pump exists, the owner shall certify that fact
257 according to the procedures set forth below. In the event that a sump
258 pump does exist, the property shall be subject to a groundwater
259 removal fee, unless said owner has permanently disconnected the
260 sump pump from the sewer or other conveyance and re-directed the
261 flow to a Recharge Well, or taken other measures to eliminate the need
262 for a sump pump. If the sump pump has not been disconnected, said
263 owner must install a utility meter to monitor and record the volume of
264 groundwater removed, and said owner must pay the groundwater
265 removal fee established pursuant to section (d). The owner shall
266 certify that (i) the sump pump has been permanently disconnected or
267 (ii) said owner has installed a utility meter and made application to the
268 Local Agency subjecting the property to payment of groundwater
269 removal fees. The owner shall sign and record the certification
270 document at the Registry of Deeds.

271 (ii) The owner shall submit a copy of the registered certification document
272 to the Department and the Local Agency.

273 (iii) This subsection shall be implemented and administered by the Local
274 Agency designated by each Covered Community pursuant to this
275 chapter.

276 (2) The following requirements shall apply to all Other Building Owners and to
277 Infrastructure Owners and Operators controlling property within an Impacted
278 Area:

279 (i) Twelve months from the effective date of this chapter, all such owners
280 or operators must ascertain whether groundwater is being removed
281 from their property. In the event that groundwater is not being
282 removed, the owner shall certify that fact according to the procedures
283 set forth below. In the event that groundwater is being removed, the
284 property shall achieve full compliance with subsections (ii) and (iii)
285 below within 12 months of the date of the effective date of this
286 chapter;

287 (ii) Within 12 months of the effective date of this chapter, all such owners
288 or operators must either: (1) have permanently disconnected their
289 sump pumps or other groundwater conveyances from the sewer or
290 other pipes or conduits that transport groundwater off their property;
291 (2) have installed a utility meter (or meters) to monitor and record the
292 volumes pumped and pay fees in accordance with the fee schedule
293 established pursuant to this chapter; or (3) have installed and
294 connected the sump pumps or other conveyances to a groundwater
295 Recharge Well (or wells) of sufficient capacity to return the
296 anticipated volume of pumped (or otherwise removed) groundwater to
297 below the ground surface of potentially impacted property.
298 Groundwater removal fees shall not be charged for groundwater
299 pumped or otherwise removed from the property if the water is
300 discharged into a Recharge Well (or wells) heretofore or thereafter;

301 (iii) The owner shall certify that: (i) any and all sump pumps or other
302 groundwater conveyances have been disconnected; (ii) said owner or
303 operator has installed a utility meter (or meters) and has applied to the
304 Local Agency for a groundwater removal permit; or (iii) a
305 groundwater Recharge Well (or wells) of sufficient capacity has been
306 installed and connected to all sump pumps or other groundwater
307 conveyances. The owner shall sign and record said certification
308 document at the Registry of Deeds.

309 (iv) This subsection shall be implemented and administered by the Local
310 Agency designated by each Covered Community pursuant to this
311 chapter.

312 (g) Duties of Owners and Operators of Underground Infrastructure to Inspect and Repair.

313 (1) Each Infrastructure Owner or Operator shall inspect their Underground
314 Infrastructure within all Impacted Areas for leaks or discharge no less
315 frequently than every five years. Said Owner or Operator shall report to the
316 Department the results of that inspection and the condition of that

317 Underground Infrastructure within 30 days of each inspection using a form to
318 be established by the Department.

319 (2) Each Infrastructure Owner or Operator within an Impacted Area shall
320 commence and diligently pursue the necessary repairs to any existing
321 groundwater leaks within 45 days of discovery; and continuously thereafter
322 monitor, repair, and maintain all Underground Infrastructure owned or
323 operated within an Impacted Area in accordance with this Act. The
324 Department may issue extensions to Infrastructure Owners or Operators upon
325 a showing of good cause.

326 (3) Infrastructure Owners or Operators shall pay any fines and penalties imposed
327 by the Department wherever said Owner or Operator fails to timely comply
328 with the inspection, reporting, and repair provisions in this subsection.

329 (h) Enforcement. The Department may issue such orders as may be reasonably necessary
330 to aid in the enforcement of the provisions of this chapter. The orders shall include,
331 but shall not be limited to, orders requiring property Owners or Operators to cease
332 any activity which is in violation of the provisions of this chapter and the standards
333 and regulations established pursuant thereto.

334 (1) Penalties. If the Department finds that any Owner or Operator is not in
335 compliance with any order issued pursuant to this section, it shall assess a
336 civil administrative penalty on such Owner or Operator. In determining the
337 amount of the civil penalty, the Department shall consider the willfulness of
338 the violation, its effect on the groundwater levels, the cost of restoration and
339 repair of properties damaged by the violation, the cost to adequately Recharge
340 groundwater levels, and the cost to the commonwealth of enforcing the
341 provisions of this chapter against such Owner or Operator.

342 (2) Injunction. In addition to collecting any civil penalties recoverable pursuant
343 to this chapter, or in the event that money damages are inadequate, the
344 Department may request the attorney general to bring an action in the superior
345 court to restrain, prevent or enjoin any conduct by any Owner or Operator that
346 is prohibited by this chapter, or to compel action to comply immediately and
347 fully with any order issued by the Department. Except in cases of emergency
348 where a court has determined that immediate abatement of the unlawful
349 conduct is required to protect the public or private interest, the court may in its
350 discretion fix a reasonable time during which the Owner or Operator
351 responsible for the unlawful conduct shall abate and correct the violation. The
352 expense of the proceeding shall be recoverable from the violator in such
353 manner as may now or hereafter be provided by law.

354 (3) Knowing Violation. It shall be unlawful for any Owner or Operator to
355 knowingly: (i) violate or assist in the violation of any of the provisions of this
356 chapter or of any rules and regulations adopted hereunder; (ii) fail to comply
357 with any order issued by the Department; or (iii) upon receipt of an order

358 pursuant to this section, continue to construct or modify any underground
359 structure in Impacted Areas. Any Owner or Operator who engages in such
360 knowing unlawful conduct shall, for each separate offense, pay a fine of not
361 less than \$1,000 dollars, nor more than \$10,000 dollars or shall be subject to a
362 civil penalty not to exceed \$25,000 dollars per day for each day such offense
363 occurs or continues, in addition to any costs to remedy harm caused. Each
364 day of violation of any provision of this chapter or of any regulation adopted
365 or order issued hereunder shall constitute a separate offense.

366 (i) Access. For the purpose of determining compliance with this chapter or any
367 regulations adopted thereunder, the duly authorized agents and employees of the
368 Department and Local Agencies may at all reasonable times, upon obtaining a court
369 order allowing the Department access or upon obtaining the voluntary consent of the
370 Residential Building Owner, Other Building Owner, and Infrastructure Owner or
371 Operator, enter and examine any Building or Underground Infrastructure potentially
372 causing groundwater removal. The owner or operator with the authority or control
373 over the Building or Underground Infrastructure, upon presentation of proper
374 identification and purpose for inspection by the agents or employees of the Local
375 Agency or Department, shall give such agents and employees free and unrestricted
376 entry and access. Such agents and employees are authorized to conduct any
377 inspection, monitoring or sampling necessary for the administration or enforcement
378 of this chapter. Notwithstanding the foregoing, when there is an actual or threatened
379 risk to the integrity of nearby surface or subsurface structures, the Local Agency and
380 Department is authorized to enter and examine any Building or Underground
381 Infrastructure as necessary for the administration or enforcement of this chapter. In
382 such cases, the Local Agency and Department is authorized to seek immediate
383 injunctive action from a court of competent jurisdiction to halt any activity
384 imminently jeopardizing the structural integrity of the Building or Underground
385 Infrastructure itself, or nearby surface or subsurface structures.

386 (j) Groundwater Protection Board.

387 (1) Within 180 days from the effective date of this chapter, the Department shall
388 create a Groundwater Protection Board within the Department to be charged
389 with the authority to resolve disputes arising from any alleged damage caused
390 by lowered groundwater levels in Covered Communities. The Department
391 shall establish rules and procedures to assist the Board in administering its
392 authority, including procedures for conducting adjudicatory proceedings, rules
393 and procedures governing notice, pleadings, motions, discovery, intervention
394 and participation, hearings, enforcement orders, penalties, rulings, and
395 appeals.

396 (2) The Board shall consist of 15 members, a majority of whom must have
397 expertise in civil or geotechnical engineering, architecture, or prior experience
398 in studies or investigations concerning groundwater and wooden pilings. Five
399 members of the Board shall be appointed by the governor, five shall be
400 appointed by the speaker of the house of representatives, and five shall be

401 appointed by the president of the senate. Each member shall serve for a term
402 of three years. Members may be reappointed for additional terms without
403 limitation.

404 (3) Any Person who owns property supported by wooden pilings in an Impacted
405 Area shall have the right to petition the Board for a determination of
406 responsibility and an apportionment of liability, provided that said Person
407 produces evidence of damage due to the alleged drawdown, including the
408 level at which the allegedly damaged wooden piles were cut off when first
409 installed. In the event that a city or town, in carrying out its obligations
410 pursuant to this chapter, makes an applicability determination that is
411 inconsistent with the criteria set forth in this Act, any Person owning property
412 within said city or town shall have the right to petition the Groundwater
413 Protection Board for review of the applicability determination.

414 (4) Upon being petitioned, the Board shall conduct an adjudicatory proceeding
415 pursuant to the regulations promulgated by the Department under this section.

416 (5) The Board shall determine the legal rights, duties, and privileges of the parties
417 to the adjudicatory proceeding, by considering the following factors: (i) risk
418 to human health, the environment, or public safety; (ii) risks to the structural
419 integrity of residential, commercial, or publicly owned structures; (iii) severity
420 of the drawdown; and (iv) other factors deemed relevant by the Board or the
421 Department or the Local Agency and as set forth and explained in the
422 regulations to be developed pursuant to this section.

423 (6) In reviewing a petition brought under this section, the Board shall:

424 (i) Appoint a Hearing Officer and Bureau Representative to investigate
425 and identify Owners and Operators of Underground Infrastructure that
426 may be liable for contributing to the groundwater drawdown problem;

427 (ii) Direct the Hearing Officer and Bureau Representative to provide
428 adequate public notice as may be required by law and to notify all
429 interested parties that a hearing will take place; and

430 (iii) Conduct a hearing and issue a ruling on the determination of
431 responsibility among Owners and Operators of Basements and
432 Underground Infrastructure causing groundwater removal.

433 (7) The Board shall further have the power to:

434 (i) Issue enforcement orders to any Owners or Operators determined to be
435 liable under this chapter to require repairs to the Basement or
436 Underground Infrastructure and the initiation of short-term and long-
437 term remediation measures;

438 (ii) Issue civil penalties consistent with this chapter;

- 439 (iii) In the case of continued noncompliance with an enforcement order
440 issued by the Board or the Department, the Department is authorized
441 to perform necessary repairs to the Underground Infrastructure and
442 seek reimbursement for the full cost of those repairs from the
443 responsible Owner or Operator;
- 444 (iv) Institute actions to recover all costs incurred by the Department under
445 this section from any Owner or Operator liable under this chapter;
- 446 (v) Require the payment of damages to injured parties; and
- 447 (vi) In the case of an Owner's or Operator's knowing or intentional
448 violation of the provisions of this Act, to bring an action in the
449 Superior Court for the county in which the alleged violation occurred
450 for the assessment of civil penalties pursuant to this chapter.
- 451 (8) Except as otherwise provided in this subsection, all Owners or Operators
452 determined by the Board to be contributing to or to have contributed to the
453 removal of groundwater in an Impacted Area shall be jointly and severally
454 liable, except as provided in subsections (j)(9) and (j)(10),
- 455 (i) To the Department for all costs incurred in bringing the Owner or
456 Operator into compliance with the requirements of this chapter; and
- 457 (ii) To any Person who owns property supported by wooden pilings for
458 damage to said Person's real property incurred or suffered as a result of
459 such removal of groundwater in an Impacted Area.
- 460 (9) Any Owner or Operator determined to be liable for any costs or damages
461 pursuant to this subsection who establishes by a preponderance of the
462 evidence that only a portion of such costs or damages is attributable to leaking
463 Basement(s) and Underground Infrastructure within that Owner's or
464 Operator's authority or control, shall be required to pay only for such portion.
- 465 (i) The limitation of natural Recharge by human intervention such as
466 paving and roofing shall not be considered an attributable cause of
467 groundwater removal, pursuant to this subsection.
- 468 (10) There shall be no liability under this subsection for an Owner or Operator
469 otherwise liable who can establish by a preponderance of the evidence that the
470 drawdown was caused by (i) an act of God or (ii) an act of war.
- 471 (11) Nothing in this chapter shall preclude citizens of the commonwealth or the
472 attorney general of the commonwealth from bringing a civil action in Superior
473 Court to enforce any provisions of this chapter.

474 (12) In issuing determinations of liability within five years of the effective date of
475 this chapter, any damages determined by the Board pursuant to this section
476 shall be awarded from the Groundwater Protection Remedial Fund.

477 (13) In recognition of the good faith endeavors of the City/State Groundwater
478 Working Group and its members, the liability provisions of this section will
479 become effective against the members of the City/State Groundwater Working
480 Group five years after the effective date of this chapter.

481 (k) Miscellaneous.

482 (1) All reports submitted to the Department pursuant to this chapter shall be
483 available to and accessible by the public.

484 (2) The Department shall accept and make available and accessible to the public,
485 in addition to the required reports, any information or data submitted by
486 Infrastructure Owners and Operators, Other Building Owners, and Residential
487 Building Owners regarding leaks or other conditions on their property that
488 may be contributing to groundwater drawdown.

489 (3) Nothing in this chapter shall bar any rights of Other Building Owners or
490 Residential Building Owners to recover damages that are available under
491 existing law, including the common law of negligence, nuisance, and
492 property.

493 SECTION 4. Section 6 of Chapter 62 of the General Laws, as so appearing, is hereby amended
494 by adding the following subsection:

495

496 (p) Any owner of residential property located in the commonwealth who is not a dependent of
497 another taxpayer and who occupies said property as his principal residence, shall be allowed a
498 credit equal to 40 per cent of the expenditures for the repair of a private sewer lateral, the
499 installation of an groundwater recharge system, or the inspection or repair of wood pilings used
500 to support the foundation of the property that may be or have been damaged due to groundwater
501 depletion. Said expenditures shall be the actual cost to the taxpayer or \$15,000, whichever is
502 less; provided, however, that said credit shall be available to eligible taxpayers beginning in the
503 tax year in which the work was completed; and provided, further, that said credit shall not exceed
504 \$1,500 in any tax year and any excess credit may be applied over the following five subsequent
505 tax years up to an aggregate maximum of \$6,000. The amount of any such credit shall be
506 reduced by an amount equal to the total grant or subsidy received from any governmental entity,
507 whether directly or indirectly, toward the cost of said expenditures. The Department of Revenue
508 shall promulgate such rules and regulations as are necessary to administer the credit afforded by
509 this subsection, and shall consult with the Department of Environmental Protection in developing
510 such rules, regulations, including defining eligible projects and costs, for said tax credit.

511

512 SECTION 5. Notwithstanding any general or special law to the contrary, the secretary of the
513 executive office of energy and environmental affairs, in cooperation with other state and federal
514 agencies, shall prepare a preliminary map of tidelands and landlocked tidelands as both are
515 defined in section 1 of chapter 91 and great ponds. The department of environmental protection
516 and the department of fish and game and other applicable state agencies shall provide
517 information to the secretary in the preparation of the preliminary map. The preliminary map
518 shall depict, where feasible (1) the boundaries of properties lying within and abutting tidelands,
519 landlocked tidelands and great ponds and (2) which tidelands are private tidelands and which are
520 Commonwealth tidelands as both are defined in section 1 of chapter 91.

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522 The secretary shall file a report with the clerks of the senate and house of representatives who
523 shall forward the same to the joint committee on environment, natural resources and agriculture
524 on or before December 31, 2010. The report shall include the preliminary map of tidelands,
525 landlocked tidelands and great ponds and shall detail the necessary resources and timeframe
526 needed to produce a final certified map that shall be filed with applicable registries of deeds.