

HOUSE No. 3831

The Commonwealth of Massachusetts

PRESENTED BY:

William C. Galvin

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 adoption of the accompanying bill:

An Act for the regulation of Reservoir pond in the town of Canton.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>7/6/2017</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>7/6/2017</i>

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By Mr. Galvin of Canton, a petition (accompanied by bill, House, No. 3831) of William C. Galvin and Walter F. Timilty (by vote of the town) that the town of Canton be authorized to regulate the use of Reservoir Pond in said town. Environment, Natural Resources and Agriculture. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act for the regulation of Reservoir pond in the town of Canton.

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. The general court finds and declares that Reservoir pond located in Canton,
2 Massachusetts was created artificially by the impounding of the waters of Pequit brook and
3 flowing of swamps, meadows and other land and that such pond is not a naturally occurring pond
4 and is not a great pond pursuant to section 35 of chapter 91 of the general laws, the Colonial
5 Ordinances of 1641-1647 or any other law. Notwithstanding any general or special law to the
6 contrary, in recognition of the circumstances that Reservoir pond is located on land originally
7 registered with the commonwealth of Massachusetts land court department of the trial court on
8 May 21, 1963 and owned by the town of Canton pursuant to certificate of title no. 185877 issued
9 by said court, the town shall have the power to regulate the use of Reservoir pond pursuant to
10 this chapter.

11 SECTION 2. As used in this chapter the following words shall, unless the context clearly
12 requires otherwise, have the following meanings.

13 “Board” shall mean the town of Canton board of selectmen.

14 “Dam” shall mean the dam in Canton, Massachusetts known as Reservoir pond dam, as
15 the same may be modified, maintained, improved, repaired and replaced from time to time, and
16 all its appurtenances and other improvements impounding the waters of Pequit brook.

17 “Reservoir pond” shall mean all water impounded by the dam, including but not limited
18 to waters from Pequit brook (sometimes known as Pequid brook) and all surface and other
19 waters naturally or otherwise flowed, drained or diverted to the Town property, up to the high-
20 water mark as the same may change from time to time but never less than the area of the Town
21 property.

22 “Town” shall mean the town of Canton.

23 “Town property” shall mean the land in Canton, Massachusetts identified (1) as Lot 1 on
24 the plan filed with the Norfolk county registry district of the land court as plan no. 23714-A, and
25 (2) as being owned by “Roger Williams Jr. et al.” and as set forth in a grant by Elijah Bailey to
26 the Neponset Company, dated November 19, 1832 and recorded at the Norfolk county registry of
27 deeds in Book 97, Page 240, together with all improvements thereto, including but not limited to
28 and any land and other property rights, including but not limited to a right to flow, acquired by
29 the town of Canton from time to time by any means, including but not limited to by adverse
30 possession or prescription arising from the presence or use of water being located at such land.

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32 SECTION 3. Fishing, boating, bathing, swimming, skating and other recreational
33 activities in, on or at Reservoir pond shall be permitted except insofar as restricted or prohibited

34 under authority of law or under rules and regulations established by the board. Said rules and
35 regulations may be changed by the board from time to time to govern and restrict some or all of
36 such activities and the use of and access to all or any portion of Reservoir pond, provided such
37 rules and regulations are not inconsistent with this chapter or with any bylaws of the town. Any
38 violation of such rules and regulations shall be deemed a violation of such bylaws.

39 SECTION 4. In addition to the powers and duties the board and the town's conservation
40 commission and other boards and officials may have pursuant to the general laws and/or any
41 town bylaw, which powers and duties shall not be deemed to have been modified or diminished
42 by this chapter, the board, may, from time to time, make rules and regulations as to the erection,
43 maintenance and control of all structures at Reservoir pond and the town property and to prevent
44 the entrance or discharge into Reservoir pond of any substance or material which by itself or in
45 combination with any other substance may be injurious to the public health or may tend to create
46 a public nuisance or to fill in, lead to the eutrophication of or otherwise be harmful to Reservoir
47 pond. Such rules and regulations may provide for penalties for violations thereof up to and
48 including three hundred dollars (\$300) for each violation and for each day such violation
49 continues to be a separate offense.

50 SECTION 5. Notwithstanding any provision herein to the contrary, the town, acting by
51 and through the board, in its sole discretion, shall at all times have the rights to operate, maintain,
52 repair, replace and remove the dam subject only to chapter 253 of the general laws and any
53 regulations promulgated thereunder, and to raise and lower the water level of Reservoir pond
54 from time to time. Nothing herein shall in any way be construed to impose any duty or
55 obligation of the Town to maintain the waters of Reservoir pond or Pequit brook at any particular
56 level or location.

57 SECTION 6. Nothing herein shall be deemed as granting to the general public or any
58 other party any rights to Reservoir pond or any waters contributing to Reservoir pond or to the
59 town property.

60 SECTION 7. Nothing in this chapter shall be deemed to relieve any party from any
61 liabilities or legal responsibilities of any kind with respect to Reservoir pond or the town
62 property, including but not limited to any person who causes or is legally responsible for a
63 release or threat of release of oil or hazardous material to Reservoir pond or the town property as
64 all such terms are defined by chapter 21E of the general laws and the regulations promulgated
65 thereunder.

66 SECTION 8. Any police officer of the town may patrol any part of the waters of
67 Reservoir pond and shall have authority to arrest any person violating any law of the
68 commonwealth in or on Reservoir pond or property adjacent to Reservoir pond or violating any
69 restriction, rule, regulation or bylaw established pursuant to this chapter.

70 SECTION 9. Insofar as this Act may be inconsistent with the provisions of any other
71 general or special law, excluding any state building code, this chapter shall be controlling.

72 SECTION 10. This chapter, being necessary for the welfare of the town and its
73 inhabitants, shall be liberally construed to effectuate the purpose hereof.

74 SECTION 11. The provisions of this act are severable, and if any of its provisions shall
75 be held unconstitutional by any court of competent jurisdiction, the decision by the court shall
76 not impair any of the other provisions of this act.

77 SECTION 12. This chapter shall take effect upon its passage.