

SENATE No. 2244

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act Text of the Senate amendment (Ways and Means) to the House Bill relative to a wastewater management district in the town of Harvard H4407.

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. As used in this act, the following words shall have the following meanings
2 unless the context clearly requires otherwise:

3 “Board of health”, the board of health of the town of Harvard.

4 “Commission” the Harvard wastewater management district commission established in
5 section 2.

6 “Costs”, all costs and expenses of the planning, design, acquisition, construction,
7 installation, reconstruction, alteration, extension, improvement or enlargement of the wastewater
8 management system including, without limitation, costs of labor, materials, professional
9 services, consulting services, equipment, grinder and ejector pumps, supplies, machinery,
10 structures, all rights in real and personal property, costs of demolitions or relocations, costs of
11 removal or relocations of public utilities, financing charges and expenses and debt service costs
12 relative to the wastewater management system.

13 “Facility”, a facility as defined in 310 CMR 15.002 as of May 1, 2009.

14 “Harvard wastewater management service area”, that portion of the town of Harvard
15 shown on a plan entitled “Proposed Sewer Service Plan, Town of Harvard, Mass. prepared for
16 Town of Harvard”, dated 11/19/2008 and revised on 3/30/2009 prepared by Norfolk Ram in
17 Association with Weston & Sampson and filed in the office of the town clerk of the town of
18 Harvard or as such service area may be modified by majority vote of the town at a town meeting,
19 upon the recommendation of the commission.

20 “Revenues”, all rates, fees, charges, rents, proceeds of loans, grant funds, insurance
21 proceeds, investment earnings and other receipts derived from the operation of the wastewater
22 management system.

23 “Town”, the town of Harvard.

24 “Wastewater”, greywater and blackwater from domestic, municipal and other
25 governmental and institutional uses; provided, however, that wastewater shall not include
26 industrial waste as defined in 310 CMR 15.002.

27 “Wastewater management system”, the wastewater collection, conveyance, treatment and
28 disposal systems serving more than 1 facility to be constructed or to be in the possession of and
29 under the jurisdiction and control of the commission, including all components thereof.

30 SECTION 2. There shall be in the town of Harvard the Harvard wastewater management
31 district commission, which shall have all of the rights, powers and duties specified in this act and
32 the General Laws relating to town boards and shall be subject to such instructions as the town
33 may, from time to time, impose by vote of its town meeting.

34 Except as otherwise provided in this act, the commission shall consist of 3 members, each
35 of whom shall be a resident of the town, at least 1 of whom shall reside in the Harvard
36 wastewater management service area. The members shall be appointed by the board of selectmen
37 within 60 days after the effective date of this act; provided, however, that the design of the
38 wastewater management system to be constructed in the service area shall have been approved
39 by vote of the town at a town meeting. Of the members first appointed, 1 shall serve in office for
40 a term expiring on June 30 in the year following the effective date of this act and 1 shall serve for
41 a term expiring on June 30 in the second year following the effective date of this act and 1 shall
42 serve for a term expiring on June 30 in the third year following the effective date of this act.
43 Thereafter, the board of selectmen shall appoint successors for terms of 3 years or, in the case of
44 an appointment to fill a vacancy, for the unexpired term. Members of the commission shall be
45 eligible for reappointment and may be removed at any time for cause by the board of selectmen.
46 Two members of the commission shall constitute a quorum and the affirmative vote of 2
47 members shall be necessary for any action taken by vote of the commission. No vacancy in the
48 membership of the commission shall impair the right of a quorum to exercise the powers of the
49 commission.

50 The commission shall annually elect 1 of its members as chair. The members shall serve
51 without compensation. The members of the commission shall not be municipal employees
52 within the meaning of paragraph (g) of section 1 of chapter 268A of the General Laws.

53 The commission shall have all of the rights, authority and powers necessary or
54 convenient to carry out this act including, but not limited to, the rights, authority and power to:

55 (a) hire, employ or engage the services of engineers, land surveyors, consultants and such
56 other experts as it deems necessary and determine their duties;

57 (b) construct, install, improve, extend, enlarge, operate, maintain, repair and reconstruct
58 the wastewater management system;

59 (c) hold, manage, maintain, control and regulate the use of town-owned property, real or
60 personal, tangible or intangible, or interests therein, for the purposes of this act, consistent with
61 all requirements of the General Laws;

62 (d) adopt rules and regulations relative to the use of and connection to the wastewater
63 management system, including the types of wastewater that may be discharged into the system,
64 subject to the approval of the board of selectmen; provided, however, that the commission may,
65 by rule or regulation, prescribe civil penalties in accordance with section 10 of chapter 83 of the
66 General Laws for the violation of any such rule or regulation; provided further, that such
67 penalties shall not exceed \$300 per day for each such violation in accordance with section 21 of
68 chapter 40 of the General Laws; provided further, that prior to adopting or amending any such
69 rule or regulation, the commission shall hold a public hearing, notice of which shall be placed in
70 a newspaper of general circulation in the town once a week for 2 consecutive weeks, the first
71 notice of which shall be published not less than 14 days before the public hearing; provided
72 further, that the notice shall include the time, date and place of the public hearing; and provided
73 further, that rules and regulations adopted or amended shall be filed in the office of the town
74 clerk and shall take effect upon such filing;

75 (e) apply for, receive, accept, administer, expend and comply with the conditions of any
76 grant, gift, loan, donation or appropriation of any money or property in aid of the purposes of this
77 act;

78 (f) sell, exchange, transfer or otherwise dispose of any surplus personal property, tangible
79 or intangible, consistent with the requirements of the General Laws;

80 (g) contract for and procure wastewater management, treatment and disposal from any
81 person, private or public corporation or government agency or entity, consistent with the General
82 Laws, when necessary or convenient for the operation of the wastewater management system;

83 (h) use and expend monies borrowed or appropriated by the town for the purposes of this
84 act;

85 (i) make contracts of every name and nature and to execute and deliver all instruments
86 necessary or convenient for carrying out its duties;

87 (j) create an overall wastewater management policy and plan for the Harvard wastewater
88 management service area, which shall be consistent with the town's master plan and open space
89 and recreation plan;

90 (k) fix, revise, charge, collect and abate fees, rates, rents, assessments, delinquency
91 charges and other charges for wastewater collection, treatment and disposal services, facilities
92 and commodities for facilities connected to the wastewater management system; provided,
93 however, that:

94 (i) subject to section 3, such fees, rates, rents, assessments, delinquency charges and other
95 charges of general application shall be adopted and revised by the commission at least annually

96 in accordance with procedures to be established by the commission for assuring that interested
97 persons are afforded notice and an opportunity to be heard; provided, however, that the
98 commission shall hold a public hearing on its schedule of fees, rates and charges or any revision
99 thereof prior to adoption, notice of which shall be delivered to the board of selectmen of the town
100 and be published in a newspaper of substantial circulation in the town at least 1 month in
101 advance of the hearing; provided further, that no later than the date of such publication, the
102 commission shall make available to the public and deliver to the selectmen and the finance
103 committee of the town the proposed schedule of fees, rates and charges; provided further, that
104 the commission may combine its fees, rates and other charges for wastewater services provided
105 by it in a single schedule of charges; provided further, that fees, rates, rents, assessments,
106 abatements and other charges established by the commission shall not be subject to supervision
107 or regulation by any department, division, commission, board, bureau or agency of the
108 commonwealth; provided, however, that such schedule shall provide for the metering,
109 monitoring and other measuring of and charging for wastewater management services provided
110 by the commission to consumers of such services in the service area; provided, however, that no
111 betterment or special assessment shall be made by the commission under chapters 80 or 83 of the
112 General Laws or any other provision of law against property owned by the town, the
113 commonwealth, any political subdivisions thereof or the federal government or any agency
114 thereof. In lieu of the town paying a betterment assessment or special assessment for wastewater
115 management services provided by the commission to the town, the town shall reduce the amount
116 it receives from its General Fund through advances or loans or the town shall make payments or
117 transfer from said General Fund an amount equal to the betterment or special assessment; and

118 (ii) subject to section 3, the fees, rates, rents, assessments and other charges so
119 established by the commission shall be set such that the aggregate amount of revenue collected is
120 sufficient to: (1) pay the current expenses of the commission; (2) pay the principal of, premium,
121 if any, and interest on bonds or other evidences of indebtedness issued by the town for the
122 commission as the same shall become due and payable; (3) create and maintain such reasonable
123 reserves as may be reasonably required by any trust agreement or resolution securing bonds; (4)
124 provide funds for paying the cost of all necessary repairs, replacements and renewals of the
125 wastewater management system; and (5) pay or provide for any amounts which the commission
126 may be obligated to pay or provide for by law or contract, including any resolution or contract
127 with or for the benefit of the holders of bonds issued for the commission;

128 (l) exercise the powers and privileges of, and be subject to the limitations on cities and
129 towns provided by sections 1 to 24, inclusive, and sections 27 to 29, inclusive, of chapter 83 of
130 the General Laws, insofar as those sections may be applicable and consistent with this act; and

131 (m) do all things as may be necessary for or incident to carrying out the foregoing powers
132 or the powers expressly granted or necessarily implied in this act; provided, however, that
133 nothing in this act shall impose any duty on the commission to maintain groundwater levels
134 within or without the boundaries of the town.

135 SECTION 3. The town may to establish an Enterprise Fund in accordance with section
136 53F½ of chapter 44 of the General Laws for the operation of the wastewater management
137 system. Not later than 1 year after the effective date of this act and annually thereafter, the
138 commission shall prepare a proposed capital improvement program for the next 3 succeeding
139 fiscal years of the commission and shall adopt an operating and capital improvement budget for

140 the next succeeding fiscal year. Such program and budget shall include a description of the
141 operations and projects proposed to be undertaken during such periods, the costs proposed to be
142 incurred in connection with such operations and projects, the method of financing such costs and
143 an estimate of the effect, if any, that such costs will have on the current or projected fees, rates,
144 assessments and other charges of the commission. The program and budget shall be annually
145 prepared and the budget shall be presented for approval to the town meeting. The commission
146 shall submit its operating capital budget to the board of selectmen and finance committee of the
147 town for review and recommendation and all funds expended by the commission shall be subject
148 to appropriation by town meeting. The commission shall hold at least 1 public hearing on the
149 proposed capital improvement program, capital budget and operating budget prior to adoption,
150 which hearing may be combined with the hearing required pursuant to subclause (i) of clause (k)
151 of the fourth paragraph of section 2, notice of which shall be delivered to said board of selectmen
152 and be published in a newspaper of substantial circulation in the town at least 1 month in
153 advance of the hearing. No later than the date of such publication, the commission shall make
154 available to the public and deliver to the board of selectmen copies of the proposed program and
155 budgets.

156 SECTION 4. The town may incur debt for development of the wastewater management
157 system in accordance with chapter 44 of the General Laws. Notwithstanding section 17 of said
158 chapter 44, the town may make temporary loans for a period of not more than 5 years in
159 anticipation of the money to be derived from the sale of bonds for the construction and
160 installation of the wastewater management system in the Harvard wastewater management
161 service area. The principal of, premium, if any, and interest on all notes and bonds issued by the
162 town on behalf of the commission, unless otherwise provided by the town, shall be payable

163 solely from the revenues derived from the wastewater management system, but shall be general
164 obligations of the town for payment of which the full faith and credit of the town shall be
165 pledged.

166 SECTION 5. The commission shall have the benefit, without further acceptance by the
167 town, of section 13B of chapter 80 of the General Laws and sections 16A, 16B and 16E of
168 chapter 83 of the General Laws. Applications for abatements in accordance with said section 16E
169 of said chapter 83 shall be made to the commission within 30 days after the date of the demand.

170 SECTION 6. Notwithstanding section 13 of chapter 80 of the General Laws: (a) the
171 board of assessors of the town may apportion all betterment assessments or unpaid balances
172 thereof relative to the wastewater management system in the Harvard wastewater management
173 service area into equal portions of up to 30 to be paid annually for a period of up to 30 years after
174 such assessments first appear on the affected landowner's real estate tax bill; and (b) betterment
175 assessments made by the commission shall, at the election of the commission, bear interest at 1
176 rate of up to 5 per cent per annum or, at a rate of up to 5 per cent above the rate of interest
177 chargeable to the town for the betterment project to which the assessments relate, from the
178 thirtieth day after betterment assessments have been committed to the town collector.

179 SECTION 7. (a) Notwithstanding section 3 of chapter 83 of the General Laws, the
180 commission shall not be required to connect any home, facility or lot to the wastewater
181 management system, except as provided in subsection (b). The commission shall not permit the
182 connection of: (i) a new facility; (ii) a facility that has been reconstructed resulting in an
183 increase of the gross floor area or in the number of bedrooms; or (iii) a facility that has
184 undergone a change in use to the wastewater management system or permit an increase in design

185 flow into the wastewater management system for a facility in existence on May 1, 2009, if that
186 new or changed facility could not have been constructed with a wastewater disposal system or
187 septic system which would comply with Title V of the State Environmental Code, 310 CMR
188 15.000, or other applicable regulations of the department of environmental protection or if the
189 increase in design flow could not have been permitted in the absence of a connection to the
190 wastewater management system, unless the commission, with the approval of the board of
191 selectmen, determines that such connection is necessary for the health, welfare or safety of the
192 town or creates a demonstrable benefit to the town.

193 (b) A facility within the Harvard wastewater management service area that is served by a
194 subsurface sewage disposal system which is in a state of failure as determined by the board of
195 health or the department of environmental protection shall be connected to the wastewater
196 management system within 6 months after the owner of the facility receives written notice from
197 the commission that the wastewater management system is complete and operational.

198 (c) An owner of a facility who is aggrieved by a decision of the commission relative to
199 such owner's application to voluntarily or involuntarily connect such owner's facility to the
200 wastewater management system may appeal the commission's decision to the board of selectmen
201 by filing a written petition with the board of selectmen within 60 days after receipt of the
202 commission's written decision. The board of selectmen may hold a hearing on the petition and
203 consult with the board of health and shall render a written decision thereon affirming, modifying
204 or reversing the commission's decision within 90 days after receipt of the petition or such longer
205 period of time as may be agreed to by the board of selectmen and the petitioner. If the board of
206 selectmen fails to act on a petition within that time, the commission's decision shall be deemed
207 to be affirmed.

208 SECTION 8. Insofar as the provisions of this act are inconsistent with the provisions of
209 any general or special law, administrative order or regulation, or any by-law, rule, regulation or
210 code of the town, other than rules and regulations or orders of the board of health or by-laws of
211 the town which require homes or facilities to be connected to the wastewater management
212 system involuntarily, the provisions of this act shall be controlling.

213 SECTION 9. This act shall take effect upon its passage.