

HOUSE No. 255

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 adoption of the accompanying bill:

An Act relative to sustainable water resources.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Linda Campbell</i>	<i>15th Essex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>James B. Eldridge</i>	
<i>William N. Brownsberger</i>	
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Patricia D. Jehlen</i>	

<i>Alice K. Wolf</i>	<i>25th Middlesex</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Theodore C. Speliotis</i>	<i>13th Essex</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>

HOUSE No. 255

By Mr. Smizik of Brookline, a petition (accompanied by bill, House, No. 255) of Frank I. Smizik and others relative to establishing standards for restoring and maintaining stream flows, water levels and hydrologic regimes that protect natural aquatic life in rivers and streams.
Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 834 OF 2009-2010.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Eleven
—————

An Act relative to sustainable water resources.

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

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

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

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

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

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

15 SECTION 1. Section 2 of Chapter 21G of the General Laws, as appearing in the 2010
16 Official Edition, is hereby amended by inserting after “Department” the following definition:-

17 “Division”, the division of fisheries and wildlife.

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

20 “Pursuant to chapter 30A, the department, after consultation with the advisory committee
21 and with the approval of the commission and the director of the division, shall adopt, and
22 thereafter from time to time may amend, regulations establishing standards for restoring and
23 maintaining stream flows, water levels and hydrologic regimes that are protective of natural
24 aquatic life for all rivers and streams in the commonwealth and ensure a balance among
25 competing water withdrawals and uses, as well as preservation of the water resource itself. Said
26 regulations, which shall incorporate the criteria, goals and conditions established by the division
27 pursuant to section 42A of chapter 131, shall be promulgated within 1 year of the division’s
28 establishment of the criteria and shall be used in the administration of this chapter. The
29 department’s regulations shall allow the department in consultation with the division to establish
30 such standards protective of natural aquatic life for a specific river or stream.”

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

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

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

36 SECTION 4. Section 8 of said chapter 21G, as so appearing, is hereby further amended
37 by inserting, in lines 21-22, after word “applicant” the following sentences:-

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

44 SECTION 5. Section 38 of chapter 40 of the General Laws, as appearing in the 2010
45 Official Edition, is hereby amended by inserting, after the second paragraph, the following
46 sentences:-

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

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

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

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

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

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

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

79 SECTION 8. Chapter 40 of the General Laws, as appearing in the 2010 Official Edition,
80 is hereby amended by adding the following section:

81 Section 61.

82 (a) Any city or town which accepts the provisions of this section may elect to acquire by
83 gift, purchase, eminent domain or otherwise, any dam, as defined by section 44 of chapter 253 of
84 the General Laws, located within the town, including any real property appurtenant thereto, if
85 such dam and any appurtenant real property is not at the time of such acquisition owned or held
86 in trust by the commonwealth. In connection with such an acquisition the town may, subject to
87 appropriation, repair, reconstruct and make improvements to a town-owned dam as may be
88 necessary, in the judgment of the board of selectmen, or the town council, each manager in a city
89 having a Plan D or Plan E form of charter or the mayor, with the approval of the city council or
90 board of aldermen in any other city, to maintain, repair or improve such dam, and to accept and
91 expend grants or gifts for such purposes in accordance with section 53A of chapter 44 upon
92 approval of the board of selectmen without further appropriation.

93 (b) Upon a two-thirds vote of the voters present and voting at a meeting duly called, the
94 municipality or public authority may borrow funds for the purposes authorized in this section.
95 Any such borrowing shall be repaid within 40 years of its date of issue, and shall be outside the
96 limit of indebtedness prescribed in section 10 of chapter 44. Except as provided in this act, any
97 borrowing pursuant hereto shall be subject to the requirements of said chapter 44.

98 (c) Any dam owned by the municipality or public authority shall constitute public
99 improvements for purposes of chapter 80 and, subject to the approval of the town, the selectmen,
100 or the town council, each manager in a city having a Plan D or Plan E form of charter or the
101 mayor, with the approval of the city council or board of aldermen in any other city, may assess
102 betterments to pay any and all costs, of or relating to, acquiring, owning, maintaining or
103 improving any such dam. Such betterments may be assessed upon properties benefiting from the
104 acquisition, ownership, repair, maintenance or improvement of such a dam and in such amounts
105 as the authorized board or official shall determine. Except as otherwise provided by this act, any
106 betterment so assessed shall be subject to said chapter 80. Any betterment assessed pursuant to
107 this act may be apportioned for a maximum term of 40 years.

108 (d) Notwithstanding any general or special law to the contrary, the municipality or public
109 authority shall have no liability for or related to the presence, release or threat of release of oil or
110 any hazardous material with respect to any dam or dams acquired by the town in accordance with
111 section that occurred prior to the date any such dam or dams were acquired by the town.

112 SECTION 9. Chapter 131 of the General Laws, as appearing in the 2010 Official Edition,
113 is hereby amended by inserting, after section 42, the following section:-

114 Section 42A. Consistent with Sections 3 of Chapter 21G of the General Laws, which
115 provides for establishing a mechanism for managing ground and surface water in the
116 commonwealth as a single hydrological system and ensuring, where necessary, a balance among
117 competing water withdrawals and uses and that factors are considered, the division shall
118 establish:

119 (1) Aquatic habitat criteria that define specific attributes necessary to maintain and
120 restore stream flows, water levels and hydrologic regimes that are protective of natural aquatic
121 life for all rivers and streams in the commonwealth. Such criteria shall be based on the best
122 scientific evidence and methodologies available and shall be based on and provide for the natural
123 variation of stream flows, and water levels adequate to ensure their chemical, biological and
124 physical integrity. The criteria shall:

125 (a) Protect and restore the natural hydrological cycle and its natural variability
126 including, but not limited to its seasonality, magnitude, frequency, duration, timing and rate of
127 change.

128 (b) Be based to the extent practical on the site specific attributes of water sources and
129 the river and coastal watersheds within which they are contained and shall provide, to the extent
130 possible, site-specific guidelines and monitoring requirements at the appropriate ecologic and
131 hydrologic scales.

132 (c) Include specific criteria designed to protect the most limiting hydrologic
133 condition at which water quality criteria must be applied at the appropriate ecological scale in
134 rivers and streams with permitted wastewater discharges.

135 These aquatic habitat criteria shall be based on and support the attainment of aquatic
136 habitat goals for water sources defined at an appropriate ecological scale. The division shall, in
137 consultation with the Department of Environmental Protection, the Department of Conservation
138 and Recreation and the Department of Agricultural Resources, define goals necessary to support
139 aquatic health, defined as native, naturally diverse community of aquatic dependent flora and
140 fauna. These goals shall be based on the best available science about the conditions necessary to
141 support native, naturally diverse communities of aquatic dependent flora and fauna including, but
142 not limited to, fluvial, coldwater and migratory fish, found, or expected to be naturally found, in
143 the water sources and the river and coastal watersheds within which they are found.

144 The division shall describe and define the range of existing aquatic habitat conditions
145 currently found in Massachusetts, and shall, as necessary, update this condition assessment.
146 Such conditions shall be based on the best available and using appropriate and generally
147 accepted statistical methods.

148 Within one year of the effective date of this act, the division shall adopt these criteria,
149 goals and condition descriptions for all rivers and streams.

150 SECTION 10. Definitions.

151 (a) Section 44 of chapter 253 of the General Laws, as appearing in the 2010 Official
152 Edition, is hereby amended by adding after line 2 the following new definition: “Abandoned”, a
153 dam that has no identifiable owner or a dam whose owner fails to respond to the owner’s
154 obligations under sections 44 to 48, inclusive, based on any emergency action taken by the
155 commissioner pursuant to section 47, and the creation of a lien upon the lot or lots of land on

156 which the dam is situated and upon the buildings and structures on said lot or lots pursuant to
157 section 48.

158 (b) Section 44 of chapter 253 is further amended by inserting in line 9 after the word
159 “any” the following words: “manmade”

160 (c) Section 44 of chapter 253 of the General Laws is further amended by inserting in line
161 17 after the words “property or safety” the following words: “or which could cause significant
162 harm to the aquatic ecosystem”.

163 (d) Section 44 of chapter 253 is further amended in line 32 by striking the words
164 “environmental management” and inserting in place thereof the following words: “conservation
165 and recreation”

166 (e) Section 44 of chapter 253 is further amended by adding after the definition of
167 “Owner” the following definition: “Remove,” or “Removal,” the controlled dismantlement or
168 breaching of a dam to the extent that water is not impounded or diverted by the dam and fish
169 passage is no longer impeded and which is dismantled in compliance with applicable laws and
170 regulations of the Commonwealth; provided, that a minimal degree of impoundment needed for
171 agricultural uses to retain wetlands and open water conditions may be allowed following
172 controlled dismantlement or breaching of a dam, while removing any impediment to fish passage
173 or alleviating threats to safety or property.

174 SECTION 10. Dam Removal.

175 (a) Section 46 of said chapter 253 of the General Laws, as appearing in the 2010 Official
176 Edition, is hereby amended in line 14 by inserting after the words “to be unsafe” the following
177 words: “or abandoned”

178 (b) Section 46 of said chapter 253 is further amended in line 22 by inserting after the
179 words “the dam into a safe condition” the following words: “or safely remove the dam”.

180 (c) Section 46A of said chapter 253 is hereby amended in line 1 by inserting 35 after the
181 word “removed” the following word: “repaired,”

182 (d) Section 46A of said chapter 253 is further amended by inserting in line 5 after the
183 words “the owner approving” the following words: “or safely removing”

184 (e) Section 46A of said chapter 253 is further amended by deleting in line 7 the words
185 “life and property,” and inserting in place thereof the following words: “safety, property or the
186 environment.”

187 (f) Section 47 of said chapter 253 is hereby amended by inserting in line 6 after the
188 words “operational condition,” the following words: “or remove the dam”

189 SECTION 11. Enforcement.

190 Section 47 of said chapter 253 is hereby amended by striking in line 22 the words “not to
191 exceed \$500” and inserting in place thereof the following words: “up to twenty five thousand
192 dollars.”

193 SECTION 12. Administration.

194 Chapter 253 of the General Laws, as appearing in the 2010 Official Edition, is hereby
195 amended by inserting, after section 47, the following section:-

196 Section 47A. Administration

197 (a) The commissioner of the department of conservation and recreation (hereinafter
198 referred to as the commissioner), in conjunction with the commissioner of fish and game, the
199 division of fish and wildlife and the riverways program shall on or before July 1, 2011, complete
200 a detailed inventory of all dams on public and private property in the Commonwealth. The
201 commissioner shall update such dam inventory on an annual basis. The commissioner shall
202 submit the inventory in a report to the joint committee on environment, natural resources and
203 agriculture and to the senate and house committees on ways and means. This report shall include
204 the following detailed information:

205 (1) A comprehensive list of the person, agency, municipality, or entity that owns and
206 operates every dam and the location of every dam where such ownership or operation has been
207 registered with the Office of Dam Safety.

208 (2) A list of specific owners who have failed to meet regulatory requirements, including
209 but not limited to, registration and inspection requirements.

210 (3) A classification of the status of all hazardous dams that pose a threat to public health,
211 safety, welfare, and property or the environment and when or whether they have been repaired,
212 including, where applicable, the presence of polluted and/or hazardous underwater sediment
213 present in the retained area of a dam.

214 (4) A comprehensive list of dams that are abandoned as defined in section 44 of chapter
215 253 of the General Laws.

216 (5) A comprehensive list of all dams whose existence, condition or operation pose a
217 threat to freshwater animal and plant and resident or migratory fish species habitat or movement.

218 (a) The commissioner must ensure Emergency Action Plans are developed for all High
219 Hazard Dams and Significant Hazard Dams, as defined in regulation. An Emergency Action Plan
220 template shall be developed and available for all dam owners. The commissioner shall ensure
221 that necessary local and state dam safety officials have immediate access to such Plans in the
222 event of a potential dam failure.

223 (b) The commissioner shall develop an inspection schedule, as required by dam safety
224 regulations, to ensure that all High Hazard, Significant Hazard, as Low Hazard Dams, as defined
225 in regulation, are inspected no less than every five years.

226 (c) The Commissioner shall review the hazard classifications of all dams at least every
227 five years, to ensure the accuracy of the dam classification.

228 (d) The Secretary of the Executive Office of Environmental Affairs shall ensure capital
229 funds are available for dam assessment, repair and removal of all dams statewide.

230 (e) The Secretary of Environmental Affairs shall write and implement a \$20,000,000
231 revolving loan fund for private dam owners to inspect, repair, and remove dams, with the
232 assistance of the Secretary of Administration and Finance. Such Fund shall be paid for through
233 the Capital budget.

234 SECTION 13. Construction.

235 Nothing in this chapter shall be interpreted in any way to alter or amend any permitting
236 requirements, reporting requirements, allocation procedures, or other requirements set forth in
237 any other provision of the general laws.