

# HOUSE . . . . . No. 3767

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## The Commonwealth of Massachusetts

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PRESENTED BY:

***David T. Vieira***

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*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 authorizing the establishment of the Mashpee Water and Sewer District.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David T. Vieira</i>	<i>3rd Barnstable</i>	<i>10/23/2013</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>	

# HOUSE . . . . . No. 3767

By Mr. Vieira of Falmouth, a petition (subject to Joint Rule 12) of David T. Vieira and Daniel A. Wolf (by vote of the town) relative to amending the charter of the town of Mashpee concerning the Mashpee Water District. Municipalities and Regional Government. [Local Approval Received.]

## The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act authorizing the establishment of the Mashpee Water and Sewer District.

*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.

2 St. 1987, c. 136, as amended, is hereby amended to read as follows: AN ACT  
3 AUTHORIZING THE ESTABLISHMENT

4 OF THE MASHPEE WATER AND SEWER

5 DISTRICT

6 SECTION 1. The inhabitants of the town of Mashpee, liable to taxation in said town and  
7 residing in the territory comprised within the territorial limits of the town of Mashpee, shall  
8 constitute a water and sewer district and are hereby made a body corporate by the name of the  
9 Mashpee Water and Sewer District, hereinafter called the "District", for the purpose of supplying  
10 themselves and others, for fair

11 consideration, with water for the extinguishing of fires and for domestic and other  
12 purposes, and for the purpose of establishing wastewater treatment works with the power to lay  
13 water and wastewater mains, groundwater treatment facilities, maintain individual wastewater  
14 treatment facilities, establish a water distribution system, establish fountains and hydrants', and  
15 to relocate and discontinue the same, within the territorial limits of the Town of Mashpee and  
16 within towns adjoining thereto, regulate the use of such water and fix and collect

17 rates to be paid therefore, construct and finance Such water treatment works and  
18 groundwater treatment facilities as may be necessary to deliver pure, healthful drinking water,

and may do all things necessary and proper for the establishment of a wastewater treatment works, and may assess and raise taxes and impose fees as provided hereinafter for the payment of such services and for defraying the necessary expenses of and to carry on the business of the District, subject to the General laws relating to such districts, except as otherwise provided herein. For these purposes, the District may seek, obtain and accept any available capital and operating funds from the commonwealth or the federal government or any authority or entity created by either of said governments and accept any donation or gift of capital, operating funds, land, easements, equipment or easements, equipment or facilities from private sources. The District shall have the power to prosecute and

defend all actions relating to its property and affairs.

The District and all its revenues, income and real and personal property shall be exempt from taxation and from betterments and special assessments and the District shall not be required to pay any tax, excise or assessment to or for the commonwealth or any of its political subdivisions; provided, however, that the District is authorized to enter into agreements to make annual payments in lieu of taxes with respect to property of the District located outside the Town of

Mashpee's territorial limits upon which local real estate taxes are being paid as of the effective date of acceptance of this chapter. Bonds issued by the District and their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be exempt from taxation within the Commonwealth.

SECTION 2. For the aforesaid purposes the District, acting by and through its Board of Water and -Sewer Commissioners, hereinafter provided for:

[a] May contract with any municipality, or with any water company, or with any water district, or any other entity for the purchase, acquisition by other means or sale of whatever water and/or waterworks or wastewater facilities which may be required, authority to furnish or purchase the same being hereby granted, and may enter into such other contracts as may be necessary to effectuate the purposes of this act, subject to District meeting appropriation of any necessary funds required to effectuate any purchase of waterworks or wastewater facilities as aforesaid;

[b] May apply for, receive, accept, administer, expend and comply with the conditions, obligations and requirements respecting any

grant, gift, loan, including without limitation any grant, gift or loan from agencies of local, state and federal governments, donation or appropriation of any property or money in aid of the purposes of the commission and to accept contributions of money, property, labor or other things of value ;

54 [c] May assess betterments for the construction of water, sewer, and wastewater  
55 facilities against the owners of land receiving a benefit or advantage thereby in accordance with  
56 the provisions of Chapter eighty and Chapter eighty three sections fifteen through fifteen-B of  
57 the General Laws; provided that any requirement in said sections or chapters for a vote by the  
58 governing body of the municipality or for a ratification of such vote by the voters of the  
59 municipality, shall be satisfied by a vote or resolution duly adopted by the Board of Water

60 and Sewer Commissioners in accordance herewith;

61 [d] May enter into contracts and agreements with any municipality in all matters  
62 necessary, convenient or desirable for carrying out the purposes of this Act including, without  
63 limiting the generality of the foregoing, collection of revenue, data processing, and other matters  
64 of management, administration and operation;

65 [e] May take by eminent domain under the provisions of chapter seventy-nine or  
66 chapter eighty A of the General Laws, or acquire, by lease, purchase, gift, or otherwise, and hold,  
67 land, the waters, or any portion thereof, or any pond, spring or stream, or of any groundwater  
68 sources of supply by means of driven, artesian or other wells, within

69 the territorial limits of the town of Mashpee , or towns adjoining thereto, not already  
70 specifically appropriated for the purposes of a public water supply by another governmental  
71 body, or for the purposes of wastewater treatment or disposal; and the water and flowage rights  
72 connected with any such land or water sources; may take as aforesaid, or acquire by purchase or  
73 otherwise, and hold , all lands, rights of way and other easements necessary for collecting,  
74 storing, holding, purifying and preserving the purity of the water and for conveying the same to  
75 any part of the district. Any person or political subdivision of the Commonwealth or body  
76 politic sustaining damages by any taking under this Act or any other thing done under

77 the authority hereof may recover such damages from the District under said Chapter  
78 seventy-nine or said Chapter eighty A; but the right to

79  
80 damages for the taking of any water, water right or water source, or for any injury  
81 thereto, shall not vest until water is actually withdrawn or diverted under the authority of this  
82 Act.

83 [f] May construct and maintain on the lands acquired and held under this act, proper  
84 dams, wells, springs, reservoirs, standpipes, tanks, pumping plants, buildings, fixtures and other  
85 structures, including the establishment and maintenance of purification works or systems, and  
86 may make excavations, procure and operate machinery and provide such other means and  
87 appliances, and do such other things as may be necessary for the establishment and maintenance  
88 of complete and effective water or wastewater works; and for that purpose may construct pipe

lines, wells and reservoirs, may establish pumping works and may construct, lay, acquire and maintain aqueducts, conduits, pipes and other works under or over any land, water courses, railroads, railways, and public or other ways and along such ways, in said town, in such manner as not unnecessarily to obstruct the same;

[g] May, for the purpose of constructing, laying, maintaining, operating and repairing such aqueducts, conduits, pipes and other works, and for all other purposes of this act, dig up or raise and embank any such lands, highways or other ways in such manner as to cause the least hindrance to public travel on such ways; provided, that the manner in which all things are done upon any such way shall be subject to the direction of the appropriate governmental authority having jurisdiction over such public ways.

[h] May enter upon any lands for the purpose of water supply exploration, making surveys, test wells or pits and borings, or any of them, and may take or otherwise acquire the right to occupy temporarily any lands necessary for the construction of any work or for any other purpose authorized by this Act;

[i] May charge a systems development charge to those applicants seeking to connect to either the water supply system or to the wastewater treatment system, which funds shall be kept by the District treasurer in a separate account to be appropriated by a District Meeting and applied, as needed, for the cost of acquisition

and /or development of new well fields, storage and distribution systems, and the purchase of all related materials, equipment, labor, work and all other items associated therewith which will contribute to the betterment of the waterworks and wastewater system, provided that applicants seeking to connect to the wastewater treatment system who have paid a systems development fee previously: for connection to the water distribution system shall be

subject only to such systems development fee relating to a connection to the wastewater treatment system;

[j] May from time to time sell such of the property of the District as shall, in the opinion of the Board of Water and Sewer Commissioners hereinafter provided for, be no longer useful in the conduct of the affairs of the District;

[k] May employ personnel and may engage architectural, engineering, accounting, management, legal, financial and environmental consulting and other professional services;

[l] May adopt rules, regulations, and policies governing the

management of the waterworks and wastewater systems and the use and consumption of water, and the output into the system of wastewater, the Rower to deny any connection to the

District being expressly granted to the Board of Water and Sewer Commissioners for any proposed connection that would be inconsistent with its rules, regulations, and policies, or which would place an undue burden on the resources of the District or unduly tax its capacity to supply water, or to treat wastewater;

[m] May establish specific construction standards and specifications for the water supply system and wastewater treatment works;

[n] May purchase insurance on behalf of itself and any of its members, officers, employees or agents against any liability arising out of his status as such, whether or not the District would have the power to indemnify him or her against such liability.

[o] May do all things necessary, convenient, or desirable for carrying out the purposes of this Act or the Powers expressly granted or necessarily implied by this Act including entering into agreements with other cities, towns or commissions or, with prior District Meeting approval, with any private person or entity, to provide for the joint operation of public activities in accordance with section four A of chapter forty. For the purposes of said Section four A of Chapter forty the Board of Water and Sewer Commissioners shall have the

powers of a prudential committee under said section. In carrying out the powers conferred by this subsection, and in recognition of the shared water bodies, estuaries, surface and groundwater resources, and wastewater treatment needs of the surrounding Towns of Barnstable, Falmouth, Sandwich, and of Barnstable County generally, the District shall not be constrained or limited to ownership of real or personal property solely within the territorial limits of the Town of Mashpee, nor be constrained to service customers only within said territorial limits of the Town of Mashpee, but rather, may engage in such joint operation of public activities, or participate in such

regional provision of water and wastewater treatment works as the Board of Water and Sewer Commissioners shall deem appropriate; and

[p] Consistent with the constitution and laws of the Commonwealth, the District shall have such other powers, including all powers pertaining to the water works system and the sewer works system held by a municipality not inconsistent herewith, as may be necessary for or incident to carrying out the foregoing powers and the accomplishment of the purposes of this Act;

provided, however, that nothing in this chapter shall impose any duty on the District to maintain groundwater levels within or without the boundaries of the District.

[q] Notwithstanding any special or general law to the contrary, the Mashpee Water and Sewer District shall not be authorized to engage in the treatment or disposal of stormwater or engage in stormwater discharge remediation, but shall exercise its powers hereunder only with

respect to the treatment and disposal of wastewater or groundwater and the provision of waterworks for the extinguishment of fires and for domestic and other purposes as set forth herein.

SECTION 3. The District shall elect by ballot, in an election

held contemporaneously with the Town of Mashpee's annual election, three persons, inhabitants of and voters in the District, to hold office for three years each, to constitute a Board of Water and Sewer Commissioners. The terms of such Water and Sewer Commissioners shall be staggered as provided for in St. 1987 c. 136 sec. 9, and the duly elected Board of Water Commissioners holding office at the effective date of this Act shall continue as Water and Sewer Commissioners until their respective term shall be complete. All authority granted to the District by this Act and by the General Laws of the Commonwealth, except as provided in Sections 4 and 6 and not otherwise specifically provided for, shall be vested in said Board of Water Commissioners, who shall be subject, however, to such instructions and by-laws as the District may by vote impose. The District, acting through its Board of Water and Sewer Commissioners, shall appoint, each for such term as it may determine, a clerk and a treasurer of the District, and such other officers and employees not specifically provided for in this Act as it may deem necessary and proper, and shall fix their compensation. The treasurer shall not be a member of the Board of Water and Sewer Commissioners and shall give bond to the District in such amounts as may be approved by said Board with a surety company authorized to transact business in the Commonwealth of Massachusetts as a surety. A majority of said

Board of Water and Sewer Commissioners shall constitute a quorum for the transaction of business. Any vacancy occurring in said Board from any cause may be filled for the remainder of its unexpired term by the District at any legal meeting called for the purpose, or by vote of the remaining members of the Board of Water and Sewer Commissioners. No money shall be drawn from the District on account of its waterworks or wastewater works except upon a written order of said Water and Sewer Commissioners or a majority of them. Any personal property or real estate taken, purchased, or acquired under this Act or under St. 1987 c. 136 as amended prior to the effective date hereof shall be managed, improved, and controlled by the Board of Water and Sewer Commissioners, in such manner as they shall deem for the best interest of the District.

SECTION 4. The District, for the purpose of paying other necessary expenses and liabilities incurred under this act, other than expenses of maintenance and operation, may from time to time borrow such additional sums as may be necessary, not exceeding, in the aggregate, Five Hundred Million Dollars and may issue bonds or notes thereof which shall bear on their face the words Mashpee Water and Sewer District Loan Act of 2013 and such other distinguishing designation as may be determined by said Board of

Water and Sewer Commissioners, and each authorized issue shall constitute a separate loan and such loans shall be payable in not more than forty years from their dates, notwithstanding any other provision of law.

The District may borrow from time to time such sums as may be necessary for the purposes of this act in anticipation of revenue. Indebtedness incurred under this act shall, except as otherwise provided herein be subject to the provisions of said chapter forty-four pertaining to such districts. Each such borrowing and each such issue of bonds or notes shall constitute a separate loan, shall be authorized by the affirmative vote of not less than two-thirds of those present at an Annual or Special meeting of the District, and shall be upon the full faith and credit of the District. All bonds or notes issued under the provisions of this act shall be obligatory upon the District and its inhabitants and the property within the limits of the District according to the tenor and purport thereof. The District shall, at the time of authorizing said loan or loans, provide for the payment thereof as authorized hereunder, and, when vote to that effect has been passed, a sum which, with available income derived from water rates, shall be sufficient to pay the annual expense of operating its waterworks and wastewater works, the interest as it accrues on the bonds or notes issued as aforesaid by the District, and to make such payments on the principal as may be required under this act, shall without further vote

be assessed upon the District by the District Assessors annually thereafter until the debt incurred by said loan or loans is extinguished.

SECTION 5. The District, acting by and through said Board of Water and Sewer Commissioners, shall, subject to the applicable provisions of law, fix just and equitable prices, charges, fees and rates for the use of water determined by: the cost of producing the same and shall prescribe the time and manner of payment. The income of the waterworks shall be available for appropriation to defray all operating expenses, interest charges and payments on principal of any loan, as accruing upon any bonus or notes issued under authority of this act.

The District, acting by and through its Board of Water and Sewer Commissioners, shall, subject to applicable provisions of law, fix just and equitable prices, charges, rates, and fees for the use of the District's Wastewater Treatment works. The income of the wastewater treatment works shall be available for appropriation to defray all operating expenses, interest charges and payments on principal of any loan, as accruing upon any bonds or notes issued under authority of this act.

If there should be a net surplus remaining at the end of any fiscal year after the payment of all costs of operation, such net surplus may be appropriated by a District Meeting for systems development costs as recommended by the Board of Water and Sewer Commissioners and in the absence of any such recommendation, shall be applied to pay costs of operation for the District for the succeeding fiscal year. Any systems development charge funds held in a separate account are to be excluded in the determination of net surplus.



231 The fiscal year of the District shall commence July first and end June thirtieth, or as  
232 otherwise provided in the bylaws of the District.

233 Notwithstanding the provision of this act or any general or special act to the contrary, the  
234 District is hereby authorized to establish a revolving fund which shall be kept separate and apart  
235 from all other monies by the treasurer of the district and in which shall be deposited only the fees  
236 received from the installation of water service and water meters. Such money may be expended  
237 without appropriation, for the payment of contractors performing such water service and meter  
238 installation, provided that no expenditures from this fund shall be made in any one fiscal year  
239 that would result in district expenditures greater than the total amount appropriated by the district  
240 meeting for the respective fiscal year

## 241 SECTION 6

242 If for any reason the revenues and available funds of the District, including revenues  
243 from prices, fees, charges, and rates for the use of water and the District's wastewater treatment  
244 works as provided in Section Five hereof, shall not be sufficient to pay the full cost of  
245 development and Operation of the District, said District shall have the power, by vote at a  
246 District Meeting duly called by the Board of Water and Sewer Commissioners, to raise and  
247 appropriate a District tax sufficient funds to pay the full cost of development or operation of the  
248

249 District and promptly thereafter the Clerk of the district shall send a certified copy of the  
250 vote to the District Assessors who shall assess the same on 1:2\_roperty within the District in the  
251 same manner in all respects in which Town taxes are required by law to be assessed.

252 For such periods as the Board of Water and Sewer Commissioners may request, the  
253 Assessors of the Town of Mashpee shall be the District assessors. During such periods, the Town  
254 Assessors shall receive such salary: for their services as District Assessors as shall be agreed  
255 upon by the Board of Water and Sewer Commissioners. All District assessments shall be  
256 committed to the District Tax Collector, who shall collect said tax in the manner provided by law  
257 for the collection of Town taxes and who shall deposit the proceeds thereof with the District  
258 treasurer for the use and benefit of said District.

259 For such periods as the Board of Water and Sewer Commissioners may request, the  
260 Town of Mashpee Tax Collector shall be the District Tax Collector. During such periods, the  
261 Town of

262 Mashpee Tax Collector shall receive such salary for services as the

263 District Tax Collector as shall be agreed upon by the Board of Water

and Sewer Commissioners. Nothing herein shall be construed to limit the authority of the District to hire its own Assessors or Tax Collector and to pay for the same from the District's revenues. Any costs incurred by either the Assessors or the Tax Collector of the Town of Mashpee in performing services hereunder shall be paid for by the District unless otherwise provided under any intermunicipal agreement between the Town and the District.

SECTION 7. Notwithstanding the provisions of section fifty-three of chapter forty-four of the General laws or any other general or special law to the contrary, the Mashpee Water and Sewer District is hereby authorized to establish a separate fund to be known as the Betterment Reserve Fund, which shall be kept separate and apart from all other monies of said District by the Treasurer of the Water and Sewer District. All betterment payments, apportioned and unapportioned and received by said district shall be deposited into said fund.

The Treasurer may invest such funds in the manner authorized by sections fifty-four and fifty-five of said chapter forty-four.

The principal and interest thereon shall be reserved for appropriation for the payment of said district's betterment debt. Any excess in said fund may be transferred to the general fund of said water and sewer district

SECTION 8. The District may, for the purpose of creating a stabilization fund, appropriate in any fiscal year an amount not exceeding ten percent (10%) of the amount raised in the preceding fiscal year by taxation of real estate. Any interest accruing shall be added to and become a part of the fund. The stabilization fund may be appropriated at an annual meeting by a two-thirds vote for any purpose for which the District would be authorized to borrow money.

SECTION 9. The District Assessors may create an overlay fund by adding to the amount to be assessed in accordance with Massachusetts General Laws Chapter 59 section 25.

SECTION 10. The District may, by vote at a District Meeting, provide for the levy of special assessments to meet the whole or part of the cost

thereafter incurred of laying pipes in public and private ways for the conveyance or distribution of water to its inhabitants, in accordance with the provisions Massachusetts General Laws, Chapter 40, Sections 42G, 42H, and 212I.

SECTION 11. The District, at any Annual or Special Meeting, may adopt by-laws regulating the call of District Meetings and the necessary quorum at any meeting and may adopt such other by-laws as are appropriate for the operation of the District. All District Meetings shall be called pursuant to a warrant issued by the Board of Water and Sewer

Commissioners. The procedure for the call of a meeting, publication of the warrant, and conduct of the meeting shall be as set forth in chapter thirty-nine of the General Laws, unless the by-laws of the District otherwise provide. The by-laws of the District may allow for such other officers not provided for in this Act as deemed necessary or proper.

Section 12. Whoever willfully or wantonly corrupts, pollutes or diverts any water obtained or supplied under this Act, or willfully or wantonly injures any reservoir, well, standpipe, aqueduct, pipe, treatment works, transmission line for water or wastewater, or any other property of the District, whether real or personal, shall forfeit to the District three times the amount of damages assessed therefore, plus reasonable attorneys fees and costs of suit including expert consultant and expert witness fees, to be recovered in an action of tort. Whoever engages in any of the foregoing willful or wanton acts shall be punished by a fine of not more than \$5,000.00 or imprisonment in a House of Correction for not more than 2 ½ years, or both.

Whoever negligently corrupts, pollutes or diverts any water obtained or supplied under this Act, or negligently injures any reservoir, well, standpipe, aqueduct, pipe, treatment works, transmission line for water or wastewater, or any other property of the District, whether real or personal, shall forfeit to the District the amount of damages assessed therefore, plus reasonable attorneys fees and costs of suit including expert consultant and expert witness fees, to be recovered in an action of tort.

SECTION 13. The District shall have the power, by vote of the Board of Water and Sewer Commissioners, to join or participate in any regional Water and / or Sewer Commission, either by Intermunicipal Agreement as authorized by Section 2 [o] hereof, pursuant to the authority granted herein under this Section 11, or in any other manner provided by law.

SECTION 14. At the next annual election following the effective date of this Act, the Board of Water and Sewer Commissioners shall cause to appear on the ballot the following Special Question:

"SHALL THE VOTERS APPROVE AN AMENDMENT TO CHAPTER 136 OF THE ACTS OF 1987 (THE LAW THAT CREATED THE MASHPEE WATER DISTRICT) WHICH WILL PERMIT THE MASHPEE WATER DISTRICT TO ENGAGE IN WASTEWATER OPERATIONS AS WELL AS WATERWORKS OPERATIONS AND WHICH WILL PERMIT THE MASHPEE WATER DISTRICT TO TAKE OVER AND OPERATE HEREINAFTER THE TOWN OF MASHPEE'S WASTEWATER AND SEWER FUNCTIONS"

If a majority of the voters of the District vote "yes" on the foregoing question, Section 1 of this Act shall take effect but if otherwise said Section 1 have no legal effect, and St. 1987 c. 136 as previously amended shall remain in effect. If the vote by Ballot

required by. this Section shall be approved by a majority of the voters of the District, all prior actions taken by the Board of Water Commissioners, District Meeting, Treasurer, and all other officers of the District pursuant to St. 198T c. 136 as amended shall remain in effect as lawful actions of the District and binding upon the District without the necessity of confirmation, ratification, or further action under this Act.

Until Section 1 of this Act takes effect and until the execution of an Intermunicipal Agreement as authorized by Section 3 of this Act, the responsibilities, duties, and powers of the Town of Mashpee relative to public sewer and wastewater treatment and disposal functions within the geographical boundaries of the Town of Mashpee shall remain in full force and effect.

Notwithstanding any\_ provision of law or any General or Special Law, no act of the Town of Mashpee prior to the effective date of Section 1 of this Act or until the effective date of any Intermunicipal Agreement authorized by Section 3 hereof, shall legally bind the Board of Water and Sewer Commissioners of the Mashpee Water and Sewer District hereunder. Said Board of Water and Sewer Commissioners may, in their discretion, agree by vote of a majority of said Board to assume or undertake any act, contract, or liability incurred by the Town of Mashpee Sewer Commission or any other instrumentality of said Town prior to the effective date hereof, but shall not be obligated to do so.

SECTION 15. The passage of Section 1 of this Act shall further effect an amendment to the Mashpee Home Rule Charter, Section 3- 2 (d), by deleting the words 'a Sewer Commission' from the first sentence of said Section.

## SECTION 2.

St. 1987, c. 136 as previously amended, or as amended by Section 1 of this Act shall not be subject to repeal or amendment through the adoption, revision or amendment of a Charter Amendment by the Town of Mashpee.

## SECTION 3.

The Mashpee Water and Sewer District and the Town of Mashpee are authorized to enter into an intermunicipal agreement, on such terms and conditions as may be mutually agreed upon, to transfer from the Town of Mashpee to the Mashpee water and Sewer District any and all property, permits, licenses, agreements, contracts, lands, wastewater treatment facilities, or other tangible or intangible property of any kind and nature, which are necessary or convenient to accomplish the purpose of transferring all of the Town's wastewater treatment operations to the Mashpee Water and Sewer District.

## SECTION 4.

367 This Act shall take effect upon its passage.

368 Approved by Mashpee Board of Water Commissioners for filing with the General Court: