

HOUSE No. 852

The Commonwealth of Massachusetts

In the Year Two Thousand 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
2 Official 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
4 memorandum of understanding, as it may be amended from time to time, entered into as of the
5 fifteenth day of September 2005 by the office, certain state authorities, the city of Boston, certain
6 city of Boston agencies and commissions, and the Boston Groundwater Trust.

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

9 The department of environmental protection shall be vested with all the powers and
10 duties which relate to groundwater supply and groundwater protection necessary to implement
11 the provisions of chapter 21 O, including the promulgation of all necessary and appropriate
12 regulations. The department of environmental protection shall, in its sole discretion, charge an

13 existing bureau with responsibility to implement the provisions of chapter 21 O or create a new
14 bureau for that purpose.

15 SECTION 3. Massachusetts Groundwater Protection Act

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

18 CHAPTER 21 O MASSACHUSETTS GROUNDWATER PROTECTION ACT.

19 Short Title. This chapter shall be known and may be cited as the "Massachusetts
20 Groundwater Protection Act".

21 Purpose. The purpose of the Massachusetts Groundwater Protection Act is to protect
22 structures supported by wooden pilings from damage due to lowered groundwater.

23 Definitions. As used in this chapter, the following words shall, unless the context clearly
24 indicates otherwise, have the following meanings:

25 "Act", the Massachusetts Groundwater Protection Act.

26 "Basement", an enclosed structure underneath a building, the floor of which is, in whole
27 or in part, below the adjacent ground surface.

28 "Board", the Groundwater Protection Board established pursuant to subsection (j) of this
29 chapter.

30 "Bureau Representative", an official from the Department charged with investigating
31 potential causes of groundwater drawdown problem upon petition to the Board.

32 "City/State Groundwater Working Group", the state and other authorities, agencies, and
33 departments that are signatories to the Memorandum of Understanding dated September 15,
34 2005, and who have been active participants in the quarterly meetings held subsequently, and
35 also including subsequent signatories.

36 "Covered Community", shall have the meaning set forth in section (e)(1) of this chapter.

37 "Department", the Department of Environmental Protection.

38 "Groundwater", all water beneath the surface of the ground, whether wholly or partly
39 within the commonwealth.

40 "Impacted Area", an area within a Covered Community where buildings or other
41 structures are known or suspected to be supported by wooden pilings.

42 "Infrastructure Owner or Operator", any person who owns, operates or maintains
43 Underground Infrastructure located within the commonwealth.

44 "Local Agency", the entity within a Covered Community designated to carry out the
45 applicable provisions of this chapter, including any department, board, commission, division,
46 authority, or other entity within a city or town, or any agency or political subdivision thereof.

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

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

51 "Owner or Operator", any Residential Building Owner, Other Building Owner, or
52 Underground Infrastructure Owner or Operator.

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

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

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

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

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

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

70 "Underground Infrastructure", any subsurface installation other than a Residential
71 Building or Other Building, such as piping and conduits, tunnels, depressed roadways, railways,

72 walkways, and Basements, including those owned, operated or maintained by public entities or
73 private parties.

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

76 Powers and Duties of the Department.

77 Within 90 days from the effective date of this chapter, the Department shall develop and
78 implement a plan for the staffing, equipping and funding of its program under this chapter.

79 The Department shall develop and adopt regulations to effectively plan and manage
80 groundwater and for the administration of this chapter as necessary and proper to ensure an
81 adequate supply of groundwater for the purpose of sustaining and protecting existing and new
82 structures supported by wooden pilings within the commonwealth.

83 Such regulations shall be designed to protect the natural supply of groundwater and
84 maintain stable groundwater levels to protect structures that now depend on sufficient
85 groundwater levels for structural support; to assure comprehensive and systematic planning and
86 management of water withdrawals impacting groundwater levels in Impacted Areas throughout
87 the commonwealth; and to remedy damage resulting from exposure caused by lowered
88 groundwater to buildings and other structures supported by wooden pilings.

89 The Department shall establish a mechanism for monitoring groundwater levels impacted
90 by leaking Underground Infrastructure, Basements, and other sources of groundwater drawdown.

91 The Department shall promulgate final regulations within 180 days of the effective date
92 of this chapter establishing the criteria, standards and procedures to be followed in making the
93 applicability determinations consistent with the provisions of subsection (e)(1).

94 Within 180 days of the effective date of this chapter, the Department shall adopt, and
95 thereafter from time to time may amend, standards and regulations on the enforcement of the
96 provisions of this chapter.

97 The Department shall have the authority to require State Agencies and Local Agencies to:
98 provide requested information from building permits and other historical records, in consultation
99 with local transportation departments, historical research organizations, and historical
100 preservation groups; conduct field monitoring, testing and inspections in order to identify
101 reporting limits; administer and enforce the Department's regulations adopted pursuant to this
102 chapter; report instances of noncompliance; and assess and collect permit fees, and fines for
103 noncompliance and nonpayment of fees and permit fees authorized by this chapter.

104 The Department shall coordinate with and provide oversight of Local Agencies to
105 effectuate the obligations imposed upon Local Agencies under this Act, and shall monitor Local
106 Agencies' compliance with all applicable provisions, including oversight of Local Agencies and
107 their responsibilities under this chapter to regulate the use of sump pumps and the administration
108 of construction permits involving groundwater removal.

109 As may be necessary from time to time to carry out the purposes of this chapter, the
110 Department may acquire real property, or any interest therein, by purchase, gift or lease, or by
111 eminent domain under the provisions of chapter seventy-nine, and may conduct construction for
112 the purpose of Recharging local groundwater.

113 The Department shall coordinate with and oversee the establishment by Local Agencies
114 of fees that shall be imposed upon any Person who pumps or otherwise removes groundwater
115 within a Covered Community in connection with activities including, but not limited to,
116 construction, excavation, renovation, operation or other groundwater removal.

117 The Department shall promulgate regulations governing the issuance of groundwater
118 removal permits for any construction, excavation, renovation, operation or other groundwater
119 removal activities being conducted within an Impacted Area. Said regulations shall set forth the
120 criteria, standards and procedures for issuing groundwater removal permits and shall establish a
121 schedule for groundwater removal fees. Upon the effective date of the Department's regulations,
122 no groundwater shall be removed from any groundwater source within an Impacted Area a
123 groundwater removal permit obtained from the Department. Said regulations shall further
124 provide, at a minimum, that:

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

127 Any Person who pumps or otherwise removes groundwater in connection with any
128 construction, excavation, renovation, operational, or other activities within the boundaries of an
129 Impacted Area shall be subject to the permitting program; the failure of any Person who is
130 subject to the permitting program to comply with the requirement to obtain a permit shall subject
131 said Person to enforcement pursuant to subsection (e)(5); each Local Agency shall provide notice
132 to all property owners within Impacted Areas of the measures they will need to undertake to
133 comply;

134 Each permit issued pursuant to this subsection shall require as a condition to the permit
135 the Recharge of groundwater being removed to the maximum extent feasible;

136 Each permit holder shall pay a groundwater removal fee established by the applicable
137 Local Agency; in the event that groundwater is directed into a local Recharge Well, groundwater
138 removal fees shall not be assessed or collected, but said Person shall remain subject to the
139 permitting program and the requirement to obtain a permit; and

140 The uniform system of groundwater removal fees established by the Department pursuant
141 to this section shall be linearly proportional to the volumes of groundwater removed, which shall
142 be monitored and recorded using a utility meter.

143 The Department is empowered to require from time to time reports, studies, and analyses
144 by Local Authorities on whether this Act should be amended to address other means of
145 maintaining groundwater sufficiency, including, but not limited to, Recharge from sidewalks,
146 parking areas, and roof drains.

147 The Department shall establish and administer various funds as set forth herein.

148 The Department is hereby authorized to establish a Groundwater Protection Fund.

149 The Department is hereby authorized to establish a Groundwater Protection Loan Fund.

150 The Department is hereby authorized to establish a Groundwater Protection Remedial
151 Fund, which shall have a funding source separate from and independent of the Groundwater
152 Protection Fund.

153 All fees, fines, and other monies collected pursuant to this chapter shall be placed into the
154 Groundwater Protection Fund.

155 Within 180 days from the effective date of this chapter, the Department shall establish
156 rules for disbursement of the funds from the Groundwater Protection Fund, which shall include
157 provisions for the periodic disbursement in equal portions to: (i) the Department for its
158 administrative costs in carrying out the provisions of this chapter; (ii) Local Agencies within
159 Covered Communities for carrying out their administrative and enforcement responsibilities
160 pursuant to the provisions of this chapter; and (iii) the Groundwater Protection Loan Fund.

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

164 Within 180 days from the effective date of this chapter, the Department shall promulgate
165 regulations for the funding and administration of the Groundwater Protection Remedial Fund.

166 Duties and Obligations of Covered Communities.

167 Applicability

168 The requirements of this section shall apply to all cities and towns that determine,
169 consistent with the provisions of this chapter, that buildings or other structures located within
170 their duly constituted boundaries are supported by wooden pilings that are structurally dependent
171 on coverage by groundwater. These cities and towns shall be designated as Covered
172 Communities.

173 All cities and towns shall make the applicability determination required under this
174 subsection and report to the Department within one year of the effective date of this chapter.
175 Such determination shall be made by majority vote of the city council or town meeting.

176 Any legal resident of said city or town shall have the right to petition the Groundwater
177 Protection Board for review of the applicability determination made by a city or town pursuant to
178 the provisions of this section if such city or town determined that buildings or other structures
179 located within its duly constituted boundaries are not supported by wooden pilings that are
180 structurally dependent on coverage by groundwater..

181 A Local Agency within each Covered Community shall be charged with the
182 responsibility of complying with the applicable requirements of this chapter.

183 The permitting program shall provide for an exception for emergency water removal,
184 including the use of sump pumps, caused by extreme weather events. A permit shall not be
185 required and fees shall not apply for fourteen days following the extreme weather event.

186 Impacted Areas

187 Each Covered Community shall identify Impacted Areas where buildings or other
188 structures are known or suspected to be supported by wooden pilings and are therefore
189 potentially subject to damage due to lowered groundwater.

190 Each Covered Community shall monitor the local levels of groundwater in Impacted
191 Areas. Monitoring may be accomplished using new or existing Monitoring Wells or other
192 techniques to monitor local levels of groundwater.

193 Each Covered Community shall publish and update at least quarter-annually a map
194 showing groundwater levels in Impacted Areas.

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

198 Construction Permits. Using regulations developed by the Department, each Covered
199 Community shall review applications for and grant safe-limit, limited-duration groundwater
200 removal permits for construction projects.

201 Enforcement. Each Covered Community is hereby authorized to collect fees pursuant to
202 this chapter, and is hereby authorized to adopt bylaws or ordinances providing for enforcement
203 and penalties against Residential Building Owners, Other Building Owners, and Owners and
204 Operators of Underground Infrastructure that are consistent with the Department's regulations
205 issued pursuant to this chapter.

206 Sump Pump Removal Program.

207 Twelve months from the effective date of this chapter, the following requirements shall
208 apply to all Residential Building Owners within an Impacted Area and shall be met prior to the
209 closing of a sale of any parcel of property located within the boundaries of an Impacted Area.

210 Each Residential Building Owner within an Impacted Area shall ascertain whether a
211 sump pump is present on such property. In the event that no sump pump exists, the owner shall
212 certify that fact according to the procedures set forth below. In the event that a sump pump does
213 exist, the property shall be subject to a groundwater removal fee, unless said owner has
214 permanently disconnected the sump pump from the sewer or other conveyance and re-directed
215 the flow to a Recharge Well, or taken other measures to eliminate the need for a sump pump. If
216 the sump pump has not been disconnected, said owner must install a utility meter to monitor and

217 record the volume of groundwater removed, and said owner must pay the groundwater removal
218 fee established pursuant to section (d). The owner shall certify that (i) the sump pump has been
219 permanently disconnected or (ii) said owner has installed a utility meter and made application to
220 the Local Agency subjecting the property to payment of groundwater removal fees. The owner
221 shall sign and record the certification document at the Registry of Deeds.

222 The owner shall submit a copy of the registered certification document to the Department
223 and the Local Agency.

224 This subsection shall be implemented and administered by the Local Agency designated
225 by each Covered Community pursuant to this chapter.

226 The following requirements shall apply to all Other Building Owners and to
227 Infrastructure Owners and Operators controlling property within an Impacted Area:

228 Twelve months from the effective date of this chapter, all such owners or operators must
229 ascertain whether groundwater is being removed from their property. In the event that
230 groundwater is not being removed, the owner shall certify that fact according to the procedures
231 set forth below. In the event that groundwater is being removed, the property shall achieve full
232 compliance with subsections (ii) and (iii) below within 12 months of the date of the effective
233 date of this chapter;

234 Within 12 months of the effective date of this chapter, all such owners or operators must
235 either: (1) have permanently disconnected their sump pumps or other groundwater conveyances
236 from the sewer or other pipes or conduits that transport groundwater off their property; (2) have
237 installed a utility meter (or meters) to monitor and record the volumes pumped and pay fees in
238 accordance with the fee schedule established pursuant to this chapter; or (3) have installed and

239 connected the sump pumps or other conveyances to a groundwater Recharge Well (or wells) of
240 sufficient capacity to return the anticipated volume of pumped (or otherwise removed)
241 groundwater to below the ground surface of potentially impacted property. Groundwater
242 removal fees shall not be charged for groundwater pumped or otherwise removed from the
243 property if the water is discharged into a Recharge Well (or wells) heretofore or thereafter;

244 The owner shall certify that: (i) any and all sump pumps or other groundwater
245 conveyances have been disconnected; (ii) said owner or operator has installed a utility meter (or
246 meters) and has applied to the Local Agency for a groundwater removal permit; or (iii) a
247 groundwater Recharge Well (or wells) of sufficient capacity has been installed and connected to
248 all sump pumps or other groundwater conveyances. The owner shall sign and record said
249 certification document at the Registry of Deeds.

250 This subsection shall be implemented and administered by the Local Agency designated
251 by each Covered Community pursuant to this chapter.

252 Duties of Owners and Operators of Underground Infrastructure to Inspect and Repair.

253 Each Infrastructure Owner or Operator shall inspect their Underground Infrastructure
254 within all Impacted Areas for leaks or discharge no less frequently than every five years. Said
255 Owner or Operator shall report to the Department the results of that inspection and the condition
256 of that Underground Infrastructure within 30 days of each inspection using a form to be
257 established by the Department.

258 Each Infrastructure Owner or Operator within an Impacted Area shall commence and
259 diligently pursue the necessary repairs to any existing groundwater leaks within 45 days of
260 discovery; and continuously thereafter monitor, repair, and maintain all Underground

261 Infrastructure owned or operated within an Impacted Area in accordance with this Act. The
262 Department may issue extensions to Infrastructure Owners or Operators upon a showing of good
263 cause.

264 Infrastructure Owners or Operators shall pay any fines and penalties imposed by the
265 Department wherever said Owner or Operator fails to timely comply with the inspection,
266 reporting, and repair provisions in this subsection.

267 Enforcement. The Department may issue such orders as may be reasonably necessary to
268 aid in the enforcement of the provisions of this chapter. The orders shall include, but shall not be
269 limited to, orders requiring property Owners or Operators to cease any activity which is in
270 violation of the provisions of this chapter and the standards and regulations established pursuant
271 thereto.

272 Penalties. If the Department finds that any Owner or Operator is not in compliance with
273 any order issued pursuant to this section, it shall assess a civil administrative penalty on such
274 Owner or Operator. In determining the amount of the civil penalty, the Department shall
275 consider the willfulness of the violation, its effect on the groundwater levels, the cost of
276 restoration and repair of properties damaged by the violation, the cost to adequately Recharge
277 groundwater levels, and the cost to the commonwealth of enforcing the provisions of this chapter
278 against such Owner or Operator.

279 Injunction. In addition to collecting any civil penalties recoverable pursuant to this
280 chapter, or in the event that money damages are inadequate, the Department may request the
281 attorney general to bring an action in the superior court to restrain, prevent or enjoin any conduct
282 by any Owner or Operator that is prohibited by this chapter, or to compel action to comply

283 immediately and fully with any order issued by the Department. Except in cases of emergency
284 where a court has determined that immediate abatement of the unlawful conduct is required to
285 protect the public or private interest, the court may in its discretion fix a reasonable time during
286 which the Owner or Operator responsible for the unlawful conduct shall abate and correct the
287 violation. The expense of the proceeding shall be recoverable from the violator in such manner
288 as may now or hereafter be provided by law.

289 Knowing Violation. It shall be unlawful for any Owner or Operator to knowingly: (i)
290 violate or assist in the violation of any of the provisions of this chapter or of any rules and
291 regulations adopted hereunder; (ii) fail to comply with any order issued by the Department; or
292 (iii) upon receipt of an order pursuant to this section, continue to construct or modify any
293 underground structure in Impacted Areas. Any Owner or Operator who engages in such
294 knowing unlawful conduct shall, for each separate offense, pay a fine of not less than \$1,000
295 dollars, nor more than \$10,000 dollars or shall be subject to a civil penalty not to exceed \$25,000
296 dollars per day for each day such offense occurs or continues, in addition to any costs to remedy
297 harm caused. Each day of violation of any provision of this chapter or of any regulation adopted
298 or order issued hereunder shall constitute a separate offense.

299 Access. For the purpose of determining compliance with this chapter or any regulations
300 adopted thereunder, the duly authorized agents and employees of the Department and Local
301 Agencies may at all reasonable times, upon obtaining a court order allowing the Department
302 access or upon obtaining the voluntary consent of the Residential Building Owner, Other
303 Building Owner, and Infrastructure Owner or Operator, enter and examine any Building or
304 Underground Infrastructure potentially causing groundwater removal. The owner or operator
305 with the authority or control over the Building or Underground Infrastructure, upon presentation

306 of proper identification and purpose for inspection by the agents or employees of the Local
307 Agency or Department, shall give such agents and employees free and unrestricted entry and
308 access. Such agents and employees are authorized to conduct any inspection, monitoring or
309 sampling necessary for the administration or enforcement of this chapter. Notwithstanding the
310 foregoing, when there is an actual or threatened risk to the integrity of nearby surface or
311 subsurface structures, the Local Agency and Department is authorized to enter and examine any
312 Building or Underground Infrastructure as necessary for the administration or enforcement of
313 this chapter. In such cases, the Local Agency and Department is authorized to seek immediate
314 injunctive action from a court of competent jurisdiction to halt any activity imminently
315 jeopardizing the structural integrity of the Building or Underground Infrastructure itself, or
316 nearby surface or subsurface structures.

317 Groundwater Protection Board.

318 Within 180 days from the effective date of this chapter, the Department shall create a
319 Groundwater Protection Board within the Department to be charged with the authority to resolve
320 disputes arising from any alleged damage caused by lowered groundwater levels in Covered
321 Communities. The Department shall establish rules and procedures to assist the Board in
322 administering its authority, including procedures for conducting adjudicatory proceedings, rules
323 and procedures governing notice, pleadings, motions, discovery, intervention and participation,
324 hearings, enforcement orders, penalties, rulings, and appeals.

325 The Board shall consist of 15 members, a majority of whom must have expertise in civil
326 or geotechnical engineering, architecture, or prior experience in studies or investigations
327 concerning groundwater and wooden pilings. Five members of the Board shall be appointed by

328 the governor, five shall be appointed by the speaker of the house of representatives, and five
329 shall be appointed by the president of the senate. Each member shall serve for a term of three
330 years. Members may be reappointed for additional terms without limitation.

331 Any Person who owns property supported by wooden pilings in an Impacted Area shall
332 have the right to petition the Board for a determination of responsibility and an apportionment of
333 liability, provided that said Person produces evidence of damage due to the alleged drawdown,
334 including the level at which the allegedly damaged wooden piles were cut off when first
335 installed. In the event that a city or town, in carrying out its obligations pursuant to this chapter,
336 makes an applicability determination that is inconsistent with the criteria set forth in this Act, any
337 Person owning property within said city or town shall have the right to petition the Groundwater
338 Protection Board for review of the applicability determination.

339 Upon being petitioned, the Board shall conduct an adjudicatory proceeding pursuant to
340 the regulations promulgated by the Department under this section.

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

347 In reviewing a petition brought under this section, the Board shall:

348 Appoint a Hearing Officer and Bureau Representative to investigate and identify Owners
349 and Operators of Underground Infrastructure that may be liable for contributing to the
350 groundwater drawdown problem;

351 Direct the Hearing Officer and Bureau Representative to provide adequate public notice
352 as may be required by law and to notify all interested parties that a hearing will take place; and

353 Conduct a hearing and issue a ruling on the determination of responsibility among
354 Owners and Operators of Basements and Underground Infrastructure causing groundwater
355 removal.

356 The Board shall further have the power to:

357 Issue enforcement orders to any Owners or Operators determined to be liable under this
358 chapter to require repairs to the Basement or Underground Infrastructure and the initiation of
359 short-term and long-term remediation measures;

360 Issue civil penalties consistent with this chapter;

361 In the case of continued noncompliance with an enforcement order issued by the Board or
362 the Department, the Department is authorized to perform necessary repairs to the Underground
363 Infrastructure and seek reimbursement for the full cost of those repairs from the responsible
364 Owner or Operator;

365 Institute actions to recover all costs incurred by the Department under this section from
366 any Owner or Operator liable under this chapter;

367 Require the payment of damages to injured parties; and

368 In the case of an Owner's or Operator's knowing or intentional violation of the provisions
369 of this Act, to bring an action in the Superior Court for the county in which the alleged violation
370 occurred for the assessment of civil penalties pursuant to this chapter.

371 Except as otherwise provided in this subsection, all Owners or Operators determined by
372 the Board to be contributing to or to have contributed to the removal of groundwater in an
373 Impacted Area shall be jointly and severally liable, except as provided in subsections (j)(9) and
374 (j)(10),

375 To the Department for all costs incurred in bringing the Owner or Operator into
376 compliance with the requirements of this chapter; and

377 To any Person who owns property supported by wooden pilings for damage to said
378 Person's real property incurred or suffered as a result of such removal of groundwater in an
379 Impacted Area.

380 Any Owner or Operator determined to be liable for any costs or damages pursuant to this
381 subsection who establishes by a preponderance of the evidence that only a portion of such costs
382 or damages is attributable to leaking Basement(s) and Underground Infrastructure within that
383 Owner's or Operator's authority or control, shall be required to pay only for such portion.

384 The limitation of natural Recharge by human intervention such as paving and roofing
385 shall not be considered an attributable cause of groundwater removal, pursuant to this subsection.

386 There shall be no liability under this subsection for an Owner or Operator otherwise
387 liable who can establish by a preponderance of the evidence that the drawdown was caused by (i)
388 an act of God or (ii) an act of war.

389 Nothing in this chapter shall preclude citizens of the commonwealth or the attorney
390 general of the commonwealth from bringing a civil action in Superior Court to enforce any
391 provisions of this chapter.

392 In issuing determinations of liability within five years of the effective date of this chapter,
393 any damages determined by the Board pursuant to this section shall be awarded from the
394 Groundwater Protection Remedial Fund.

395 In recognition of the good faith endeavors of the City/State Groundwater Working Group
396 and its members, the liability provisions of this section will become effective against the
397 members of the City/State Groundwater Working Group five years after the effective date of this
398 chapter.

399 Miscellaneous.

400 All reports submitted to the Department pursuant to this chapter shall be available to and
401 accessible by the public.

402 The Department shall accept and make available and accessible to the public, in addition
403 to the required reports, any information or data submitted by Infrastructure Owners and
404 Operators, Other Building Owners, and Residential Building Owners regarding leaks or other
405 conditions on their property that may be contributing to groundwater drawdown.

406 Nothing in this chapter shall bar any rights of Other Building Owners or Residential
407 Building Owners to recover damages that are available under existing law, including the
408 common law of negligence, nuisance, and property.

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

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

427 SECTION 5. Notwithstanding any general or special law to the contrary, the secretary of
428 the executive office of energy and environmental affairs, in cooperation with other state and
429 federal agencies, shall prepare a preliminary map of tidelands and landlocked tidelands as both
430 are defined in section 1 of chapter 91 and great ponds. The department of environmental
431 protection and the department of fish and game and other applicable state agencies shall provide

432 information to the secretary in the preparation of the preliminary map. The preliminary map
433 shall depict, where feasible (1) the boundaries of properties lying within and abutting tidelands,
434 landlocked tidelands and great ponds and (2) which tidelands are private tidelands and which are
435 Commonwealth tidelands as both are defined in section 1 of chapter 91.

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