

SENATE No. 370

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to protect public water supply lands..

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. Chapter 40 of the General Laws is hereby amended by striking out
2 39G, as appearing in the 2004 Official Edition, and inserting in place thereof the following
3 section:-Section 39G. Whoever willfully or wantonly corrupts, pollutes or diverts any of the
4 waters taken or held under said sections 39A to 39E, inclusive, or injures any structure, work or
5 other property owned, held or used by a town under the authority and for the purposes of said
6 sections, shall forfeit and pay to said town 3 times the amount of damages assessed therefore, to
7 be recovered in an action of tort; and upon conviction of any one of the above willful or wanton
8 acts shall be punished by a fine of not more than \$5,000 or by imprisonment in state prison for
9 not more than 5 years or in the house of correction for not more than 2½ years, or by both such
10 fine and imprisonment.

11 SECTION 2. Chapter 92A1/2 of the General Laws is hereby amended by striking out
12 section 9, as so appearing, and inserting in place thereof the following section:-

13 Section 9. A person who without lawful authority takes or diverts water from a water
14 supply within the watershed system of the division, or who corrupts or defiles the water supply,

15 or a source of the water supply, or who injures, destroys or interferes with property held or used
16 by the authority for the purpose of constructing, operating or maintaining the watershed system,
17 or who violates or refuses to comply with a rule, regulation or order of the department shall be
18 punished by a criminal fine of not more than \$50,000 or by imprisonment in state prison for not
19 more than 5 years or in the house of correction for not more than 2½ years, or by both such fine
20 and imprisonment. In cases of continuing violation, the maximum fine shall be \$10,000 day for
21 each day the violation occurs or continues. Notwithstanding any limitation on criminal penalties
22 set forth in the preceding sentence, a person convicted of the wanton or malicious destruction of
23 or injury to property used in the construction, operation or maintenance of the watershed system
24 shall also be liable in tort to the department for triple the amount of damages thereby caused. The
25 fine or tort judgment shall be payable to the treasury of the commonwealth.

26 SECTION 3. Chapter 111 of the General Laws is hereby amended by striking out section
27 170, as so appearing, and inserting in place thereof the following section:-

28 Section 170. Whoever willfully and maliciously defiles or corrupts a spring or other
29 source of water, or reservoir, or destroys or injures a pipe, conductor of water or other property
30 pertaining to an aqueduct, or aids or abets in the trespass, shall be punished by a fine of not more
31 than \$25,000 for each day that the willful and malicious activity occurs or continues, or by
32 imprisonment in state prison for not more than 5 years or in the house of correction for not more
33 than 2½ years, or by both such fine and imprisonment. Whoever otherwise defiles or corrupts a
34 spring or other source of water, or reservoir, or destroys or injures a pipe, conductor of water or
35 other property pertaining to an aqueduct shall be subject to a civil penalty not to exceed \$25,000
36 for each day that the violation occurs or continues.

37 SECTION 4. Chapter 266 of the General Laws is hereby amended by inserting after
38 section 123, as so appearing, the following section:-

39 Section 123A. (a) Whoever willfully trespasses upon any public source of water or public
40 water supply facilities or land, after having been forbidden to do so by a person who has lawful
41 control of the water, facilities or land, or an agent thereof, whether directly or by notice posted
42 thereon, with the intent to corrupt, pollute or defile such public source of water, shall be
43 punished by a fine of not less than \$1,000 nor more than \$5,000 or by imprisonment in the house
44 of correction for not more than 2½ years or in state prison for not more than 5 years, or by both
45 such fine and imprisonment. Whoever is convicted of a second or subsequent violation of this
46 section shall be punished by a fine of not less than \$1,000 nor more than \$10,000 or by
47 imprisonment in state prison for not less than 5 years nor more than 10 years, or by both such
48 fine and imprisonment.

49 (b) Whoever willfully trespasses upon any public source of water or public water supply
50 facilities or land, after having been forbidden to do so by a person who has lawful control of the
51 water, facilities or land, or an agent thereof, whether directly or by notice posted thereon, shall be
52 punished by a fine of not less than \$250 nor more than \$1,000.

53 (c) In addition to such punishment, and not in lieu thereof, restitution in the amount of
54 costs associated with water quality analysis and any subsequent investigation to determine water
55 safety and security of the facilities or land may be ordered by the court, after a hearing relative to
56 such restitution.

57 (d) A law enforcement officer may arrest without a warrant any person he has probable
58 cause to believe has violated this section.