

**SENATE . . . . . No. 436**

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Nine**  
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An Act to establish a water resources conservation act and efficiency program.

*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 21 of the General Laws is hereby amended by inserting after  
2 Section 17F the following sections:—

3 Section 17G. The Department of Conservation and Recreation, with assistance and  
4 support from the Department of Environmental Protection, is authorized and directed to establish  
5 a water conservation and water resources protection program. Said program shall be  
6 implemented to increase the efficiency of water use, mitigate the environmental impacts of water  
7 withdrawals, assess the effectiveness of various water conservation and water resource protection  
8 measures in increasing efficiency of water use, and to identify effective measures to protect and  
9 conserve water resources and biological resources throughout the Commonwealth. Said program  
10 shall include, but not be limited to:

- 11 (1) the establishment and implementation of a program for the installation of water  
12 conserving plumbing fixtures in residential, municipal, and state-owned buildings; for  
13 conducting water audits of residential, commercial and municipal buildings; for the installation  
14 of new, highly accurate water meters in commercial, municipal, and state-owned buildings, and

15 for the development and implementation of landscape practices that eliminate or significantly  
16 reduce outdoor water use;

17 (2) technical assistance to municipalities, water districts and water authorities for  
18 comprehensive system wide water audits, water use accounting and reporting and intensive leak  
19 detection and repair programs;

20 (3) the preparation of model municipal bylaws/ordinances for site development,  
21 stormwater management, including stormwater infiltration and recharge, landscape and  
22 recreational facility design and irrigation and water conservation;

23 (4) the development of model water conserving rate structures and billing procedures  
24 that fully incorporate the cost of producing water and protecting water resources;

25 (5) the development of public education programs, school curricula, and supporting  
26 materials relating to water conservation and water resource protection;

27 (6) development of a methodology for estimating long-term water needs that  
28 considers the impact of community build-out projections and provides technical assistance to  
29 municipalities, water districts, and water authorities in developing water needs estimates; and,

30 (7) directing technical assistance to municipalities, water districts and water  
31 authorities in the efficient management, use and protection of water resources consistent with the  
32 purpose of this Act.

33 Model bylaws/ordinances, educational materials, technical assistance guidance  
34 documents, and other resources generated from said program shall be made available for the  
35 benefit of all municipalities of the Commonwealth, water districts, and water authorities.

36 Participation of municipalities, water districts, and water authorities in any or all elements of the  
37 program shall be voluntary.

38 All elements of the water conservation and water resource protection program  
39 implemented by municipalities and water districts and water authorities shall be assessed as to  
40 their effectiveness by the Massachusetts Water Resources Commission, with the assistance of  
41 participating municipalities, water districts, water authorities and the Department of  
42 Environmental Management, the Department of Environmental Protection, and nongovernmental  
43 organizations concerned with water resources. Within five years of the passage of this Act the  
44 Water Resources Commission shall file a report with the clerk of the House and Senate  
45 identifying the success or failure of all measures developed and implemented under said  
46 program. Said report shall include recommendations for implementation of water conservation  
47 and water resource protection measures throughout the Commonwealth and an estimate of the  
48 funding necessary to implement such measures.

49 Section 17H. A sum of \$150,000 is hereby provided to the Water Resources Research  
50 Center of the University of Massachusetts to conduct a study and prepare a report on the laws,  
51 regulations, and policies of the Commonwealth dealing with water conservation, water resource  
52 protection, drought preparedness, and instream flow. Said report shall identify any  
53 inconsistencies or potential inconsistencies of these laws, regulations and policies with the  
54 Federal Clean Water Act. Said report shall include recommendations for legislative, regulatory,  
55 and policy changes necessary to ensure the preservation of adequate instream flows to protect the  
56 native biological communities of the rivers and streams of the Commonwealth and to ensure an  
57 adequate supply of water to meet the health, safety and economic needs of the public. Said report  
58 shall include recommendations regarding additional water conservation measures needed to

59 improve the efficiency of residential, commercial, industrial, institutional and agricultural water  
60 use in the Commonwealth, including, but not limited to, more aggressive leak detection and  
61 repair programs, and programs and/or policies to reduce unaccounted for water, including water  
62 meter responsibility for water meters, and the need for tax credits or other financial incentives to  
63 encourage water conservation.

64 Section 17I. The position of Massachusetts Water Conservation Coordinator is hereby  
65 established within the Executive Office of Environmental Affairs. The Commonwealth's Water  
66 Conservation Coordinator shall be responsible for assisting municipalities, water districts, and  
67 water authorities of the Commonwealth as established by the Water Resources Commission. The  
68 state water conservation coordinator shall also be responsible for administering the water  
69 conservation and water resources protection program established under Section 17G of this Act.  
70 A sum of \$500,000, to be provided in annual increments of \$100,000 per year for five years,  
71 beginning in the year immediately following the passage of this Act, is provided for funding of  
72 the Water Conservation Coordinator and work of said office, and for the development and  
73 administration of the water conservation and water resources protection program established in  
74 Section 17G of this Act, including technical assistance to municipalities and water districts and  
75 authorities, development of educational programs, curricula, and materials, development of  
76 model bylaws, ordinances and regulations, and to conduct required studies and prepare reports.

77 Section 17J. The Water Resources Research Center of the University of Massachusetts, in  
78 consultation with the Department of Environmental Protection, the Department of Conservation  
79 and Recreation, the Massachusetts Department of Fisheries, Wildlife and Environmental Law  
80 Enforcement, the United States Fish and Wildlife Service, and the United States Geological  
81 Survey, is authorized and directed to develop a methodology or methodologies for determining

82 the level of instream flow sufficient to protect aquatic life in Massachusetts rivers and streams  
83 and other surface waters. Said methodology or methodologies shall account for natural annual  
84 variations in hydrology, including flow, depth, velocity, groundwater interaction and other  
85 relevant factors. Upon completion, said methodology or methodologies shall be submitted to the  
86 Department of Environmental Protection, the Department of Conservation and Recreation, and  
87 the Water Resources Commission as a recommendation for establishing instream flow needs  
88 under the Water Management Act (MGL Chapter 21G) and Interbasin Transfer Act (MGL  
89 Chapter 21:8D).

90 No later than two years following the passage of this Act, a methodology or  
91 methodologies shall be completed and adopted by the water resources commission, pursuant to  
92 the administrative procedures act, and a report describing the methodology or methodologies  
93 shall be filed with the clerks of the Senate and House of Representatives. A sum of \$250,000 is  
94 hereby authorized for the development of said methodology or methodologies. Until said  
95 methodology or methodologies are completed, all future instream flow decisions pertaining to  
96 new or increased water withdrawals or interbasin transfers pursuant to the Water Management  
97 Act and its implementing regulations and the Interbasin Transfer Act and its implementing  
98 regulations shall consider site specific information, including but not limited to, stream flows and  
99 their variability, groundwater levels and interaction with surface water, water velocity, depth,  
100 temperature, water chemistry, native biota and habitat suitability. Insofar as site-specific  
101 information sufficient to make permitting decisions is unavailable and unobtainable during the  
102 permitting period, the stream flow guidelines of the United States Fish and Wildlife Service  
103 Interim Regional Policy for New England Stream Flow Recommendations shall be used.

104 Section 17K. Notwithstanding the provisions of any general or special law to the  
105 contrary, the water pollution abatement trust established under the provisions of chapter 29C of  
106 the general laws is hereby authorized and directed, subject to the appropriation provided herein,  
107 to provide grant, loan and financial assistance to eligible borrowers to finance the costs of water  
108 conservation projects, or portions thereof, which have been approved by the department of  
109 environmental protection. As used in this section, the term “eligible borrower” shall mean  
110 municipalities, water districts, and water authorities. As used in this section, the term “water  
111 conservation project” shall mean a project of a type or category which the department has  
112 determined shall promote water conservation and increased efficiency of water usage, including,  
113 but not limited to, the implementation of programs for the replacement of plumbing fixtures not  
114 meeting the 1998 federal water efficiency standards as established by the Federal Energy Act of  
115 1992; the conducting of water audits by municipalities, water districts, and water authorities to  
116 identify opportunities to reduce water use; the installation of new, highly accurate water meters  
117 in commercial, municipal, and state-owned buildings; enhanced municipal ownership and  
118 maintenance responsibility for water meters; and the planning and design of other eligible water  
119 projects that increase water conservation and the efficiency of water usage. The trust shall  
120 provide grant, loan and financial assistance to eligible borrowers for each water conservation  
121 project or portion thereof authorized by this section in such manner and under such terms and  
122 conditions as shall be determined by the board of trustees of a trust up to a maximum amount of  
123 \$2,000,000 per fiscal year of the commonwealth and up to \$10,000,000 in the aggregate.