

SENATE No. 436

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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

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

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

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

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

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

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

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

Model bylaws/ordinances, educational materials, technical assistance guidance documents, and other resources generated from said program shall be made available for the 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

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

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

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

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

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

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