

SENATE No. 349

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 relative to sustainable water resources.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James B. Eldridge</i>	
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Patricia D. Jehlen</i>	
<i>Susan C. Fargo</i>	
<i>Katherine M. Clark</i>	<i>Fifth Middlesex</i>
<i>Kenneth J. Donnelly</i>	
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol and Plymouth</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>

SENATE No. 349

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 349) of James B. Eldridge, Frank I. Smizik, Stephen Kulik, Patricia D. Jehlen and other members of the General Court for legislation relative to establishing standards for restoring and maintaining stream flows, water levels and hydrologic regimes that protect natural aquatic life in rivers and streams . Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 834 OF 2009-2010.]

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
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An Act relative to sustainable water resources.

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 21G of the General Laws, as appearing in
2 the 2010 Official Edition, is hereby amended by inserting after “Department” the following
3 definition:-

4 “Division”, the division of fisheries and wildlife.

5 SECTION 2. Section 3 of said chapter 21G, as so appearing, is hereby further
6 amended by inserting, in line 67, after the phrase “chapter twenty-one”, the following
7 sentences:—

8 “Pursuant to chapter 30A, the department, after consultation with the advisory committee
9 and with the approval of the commission and the director of the division, shall adopt, and
10 thereafter from time to time may amend, regulations establishing standards for restoring and
11 maintaining stream flows, water levels and hydrologic regimes that are protective of natural
12 aquatic life for all rivers and streams in the commonwealth and ensure a balance among
13 competing water withdrawals and uses, as well as preservation of the water resource itself. Said
14 regulations, which shall incorporate the criteria, goals and conditions established by the division
15 pursuant to section 42A of chapter 131, shall be promulgated within 1 year of the division’s
16 establishment of the criteria and shall be used in the administration of this chapter. The
17 department’s regulations shall allow the department in consultation with the division to establish
18 such standards protective of natural aquatic life for a specific river or stream.”

19 SECTION 3. Section 7 of said chapter 21G, as so appearing, is hereby further
20 amended by inserting at the end thereof the following sentence:-

21 (11) All feasible means to avoid, or if not possible, to minimize and mitigate
22 impacts of the withdrawal on the natural environment have been taken.

23 (12) Consistency with the standards adopted by the department pursuant to
24 section 3.

25 SECTION 4. Section 8 of said chapter 21G, as so appearing, is hereby further
26 amended by inserting, in lines 21-22, after word “applicant” the following sentences:-

27 (10) A demonstration that all feasible means to avoid, or if not possible, to
28 minimize and mitigate impacts of the withdrawal on the natural environment have been taken or
29 will be taken. Mitigation shall occur upstream in the same sub-basin as the withdrawal to the

30 maximum extent practicable, and within the same basin as the withdrawal if such impacts cannot
31 be offset in the same sub-basin. Permittees may enter into agreements with third parties,
32 including the Department of Fish and Game, to implement mitigation required herein.

33 SECTION 5. Section 38 of chapter 40 of the General Laws, as appearing in the
34 2010 Official Edition, is hereby amended by inserting, after the second paragraph, the following
35 sentences:-

36 Notwithstanding any general or special law to the contrary, no source of water
37 supply and no lands necessary for protecting and preserving the purity of the water shall be sold
38 by a city or town to a private corporation without first obtaining the advice and consent of the
39 department of environmental protection.

40 SECTION 6. Section 39J of chapter 40 of the General Laws, as so appearing, is
41 hereby amended by inserting, in line 15, after the word " protection," the following words:- "all
42 costs or measures to ensure the long-term sustainability of the water supply,".

43 SECTION 7. Said chapter 40, as so appearing, is hereby further amended by
44 inserting after section 39L the following section:-

45 Section 39M. Establishment of Sustainable Water Resource Fund.

46 Notwithstanding any general or special law to the contrary, a city, town, board
47 of water or sewer commissioners, officers performing like duties, or water or sewer district may
48 collect a reasonable fee to be used exclusively to offset and remedy impacts of water
49 withdrawals, sewerage, or impairment of recharge of groundwater on the natural environment
50 through depletion of ground or surface waters, and to sustain the quantity, quality and ecological

51 integrity of waters of the commonwealth. Such measures for water return or water loss
52 prevention shall include without limitation, local recharge of stormwater and wastewater, reuse
53 of water, removal of infiltration and inflow, water savings achieved by retrofitting existing
54 development with low impact development methods or water-saving devices, dam removal and
55 land acquisition only for 1) wellhead protection of a public water supply or 2) for siting a
56 decentralized wastewater treatment facility.

57 The fee, which may be based on retaining within the basin or saving at least
58 one gallon, but no more than ten gallons, for every gallon of increased water or sewer demand, or
59 net impairment of recharge shall be assessed in a fair and equitable manner, and separate uniform
60 fees may be established for residential and commercial uses.

61 All such fees shall be deposited in a separate account classified as a
62 "Sustainable Water Resource Fund." This Fund shall not be used for any purpose not provided in
63 this section. The Fund may also receive monies from public and private sources as gifts, grants,
64 and donations to further water conservation, water return or water loss prevention; from the
65 federal government as reimbursements, grants-in-aid or other receipts on account of water
66 infrastructure improvements; or fines, penalties or supplemental environmental projects. Any
67 interest earned from whatever source shall be credited to and become part of said Fund.

68 SECTION 8. Chapter 40 of the General Laws, as appearing in the 2010 Official
69 Edition, is hereby amended by adding the following section:

70 Section 61.

71 (a) Any city or town which accepts the provisions of this section may elect to
72 acquire by gift, purchase, eminent domain or otherwise, any dam, as defined by section 44 of

73 chapter 253 of the General Laws, located within the town, including any real property
74 appurtenant thereto, if such dam and any appurtenant real property is not at the time of such
75 acquisition owned or held in trust by the commonwealth. In connection with such an acquisition
76 the town may, subject to appropriation, repair, reconstruct and make improvements to a town-
77 owned dam as may be necessary, in the judgment of the board of selectmen, or the town council,
78 each manager in a city having a Plan D or Plan E form of charter or the mayor, with the approval
79 of the city council or board of aldermen in any other city, to maintain, repair or improve such
80 dam, and to accept and expend grants or gifts for such purposes in accordance with section 53A
81 of chapter 44 upon approval of the board of selectmen without further appropriation.

82 (b) Upon a two-thirds vote of the voters present and voting at a meeting duly
83 called, the municipality or public authority may borrow funds for the purposes authorized in this
84 section. Any such borrowing shall be repaid within 40 years of its date of issue, and shall be
85 outside the limit of indebtedness prescribed in section 10 of chapter 44. Except as provided in
86 this act, any borrowing pursuant hereto shall be subject to the requirements of said chapter 44.

87 (c) Any dam owned by the municipality or public authority shall constitute
88 public improvements for purposes of chapter 80 and, subject to the approval of the town, the
89 selectmen, or the town council, each manager in a city having a Plan D or Plan E form of charter
90 or the mayor, with the approval of the city council or board of aldermen in any other city, may
91 assess betterments to pay any and all costs, of or relating to, acquiring, owning, maintaining or
92 improving any such dam. Such betterments may be assessed upon properties benefiting from the
93 acquisition, ownership, repair, maintenance or improvement of such a dam and in such amounts
94 as the authorized board or official shall determine. Except as otherwise provided by this act, any

95 betterment so assessed shall be subject to said chapter 80. Any betterment assessed pursuant to
96 this act may be apportioned for a maximum term of 40 years.

97 (d) Notwithstanding any general or special law to the contrary, the
98 municipality or public authority shall have no liability for or related to the presence, release or
99 threat of release of oil or any hazardous material with respect to any dam or dams acquired by
100 the town in accordance with section that occurred prior to the date any such dam or dams were
101 acquired by the town.

102 SECTION 9. Chapter 131 of the General Laws, as appearing in the 2010
103 Official Edition, is hereby amended by inserting, after section 42, the following section:-

104 Section 42A. Consistent with Sections 3 of Chapter 21G of the General Laws,
105 which provides for establishing a mechanism for managing ground and surface water in the
106 commonwealth as a single hydrological system and ensuring, where necessary, a balance among
107 competing water withdrawals and uses and that factors are considered, the division shall
108 establish:

109 (1) Aquatic habitat criteria that define specific attributes necessary to maintain
110 and restore stream flows, water levels and hydrologic regimes that are protective of natural
111 aquatic life for all rivers and streams in the commonwealth. Such criteria shall be based on the
112 best scientific evidence and methodologies available and shall be based on and provide for the
113 natural variation of stream flows, and water levels adequate to ensure their chemical, biological
114 and physical integrity. The criteria shall:

115 (a) Protect and restore the natural hydrological cycle and its natural variability
116 including, but not limited to its seasonality, magnitude, frequency, duration, timing and rate of
117 change.

118 (b) Be based to the extent practical on the site specific attributes of water
119 sources and the river and coastal watersheds within which they are contained and shall provide,
120 to the extent possible, site-specific guidelines and monitoring requirements at the appropriate
121 ecologic and hydrologic scales.

122 (c) Include specific criteria designed to protect the most limiting hydrologic
123 condition at which water quality criteria must be applied at the appropriate ecological scale in
124 rivers and streams with permitted wastewater discharges.

125 These aquatic habitat criteria shall be based on and support the attainment of
126 aquatic habitat goals for water sources defined at an appropriate ecological scale. The division
127 shall, in consultation with the Department of Environmental Protection, the Department of
128 Conservation and Recreation and the Department of Agricultural Resources, define goals
129 necessary to support aquatic health, defined as native, naturally diverse community of aquatic
130 dependent flora and fauna. These goals shall be based on the best available science about the
131 conditions necessary to support native, naturally diverse communities of aquatic dependent flora
132 and fauna including, but not limited to, fluvial, coldwater and migratory fish, found, or expected
133 to be naturally found, in the water sources and the river and coastal watersheds within which
134 they are found.

135 The division shall describe and define the range of existing aquatic habitat
136 conditions currently found in Massachusetts, and shall, as necessary, update this condition

137 assessment. Such conditions shall be based on the best available and using appropriate and
138 generally accepted statistical methods.

139 Within one year of the effective date of this act, the division shall adopt these
140 criteria, goals and condition descriptions for all rivers and streams.

141 SECTION 10. Definitions.

142 (a) Section 44 of chapter 253 of the General Laws, as appearing in the 2010
143 Official Edition, is hereby amended by adding after line 2 the following new
144 definition:“Abandoned”, a dam that has no identifiable owner or a dam whose owner fails to
145 respond to the owner’s obligations under sections 44 to 48, inclusive, based on any emergency
146 action taken by the commissioner pursuant to section 47, and the creation of a lien upon the lot
147 or lots of land on which the dam is situated and upon the buildings and structures on said lot or
148 lots pursuant to section 48.

149 (b) Section 44 of chapter 253 is further amended by inserting in line 9 after the
150 word “any” the following words: “manmade”

151 (c) Section 44 of chapter 253 of the General Laws is further amended by
152 inserting in line 17 after the words “property or safety” the following words: “or which could
153 cause significant harm to the aquatic ecosystem”.

154 (d) Section 44 of chapter 253 is further amended in line 32 by striking the
155 words “environmental management” and inserting in place thereof the following words:
156 “conservation and recreation”

157 (e) Section 44 of chapter 253 is further amended by adding after the definition
158 of “Owner” the following definition: “Remove,” or “Removal,” the controlled dismantlement or
159 breaching of a dam to the extent that water is not impounded or diverted by the dam and fish
160 passage is no longer impeded and which is dismantled in compliance with applicable laws and
161 regulations of the Commonwealth; provided, that a minimal degree of impoundment needed for
162 agricultural uses to retain wetlands and open water conditions may be allowed following
163 controlled dismantlement or breaching of a dam, while removing any impediment to fish passage
164 or alleviating threats to safety or property.

165 SECTION 11. Dam Removal.

166 (a) Section 46 of said chapter 253 of the General Laws, as appearing in the
167 2010 Official Edition, is hereby amended in line 14 by inserting after the words “to be unsafe”
168 the following words: “or abandoned”

169 (b) Section 46 of said chapter 253 is further amended in line 22 by inserting
170 after the words “the dam into a safe condition” the following words: “or safely remove the dam”.

171 (c) Section 46A of said chapter 253 is hereby amended in line 1 by inserting 35
172 after the word “removed” the following word: “repaired,”

173 (d) Section 46A of said chapter 253 is further amended by inserting in line 5
174 after the words “the owner approving” the following words: “or safely removing”

175 (e) Section 46A of said chapter 253 is further amended by deleting in line 7 the
176 words “life and property,” and inserting in place thereof the following words: “safety, property
177 or the environment.”

178 (f) Section 47 of said chapter 253 is hereby amended by inserting in line 6 after
179 the words “operational condition,” the following words: “or remove the dam”

180 SECTION 12. Enforcement.

181 Section 47 of said chapter 253 is hereby amended by striking in line 22 the
182 words “not to exceed \$500” and inserting in place thereof the following words: “up to twenty
183 five thousand dollars.”

184 SECTION 13. Administration.

185 Chapter 253 of the General Laws, as appearing in the 2010 Official Edition, is
186 hereby amended by inserting, after section 47, the following section:-

187 Section 47A. Administration

188 (a) The commissioner of the department of conservation and recreation
189 (hereinafter referred to as the commissioner), in conjunction with the commissioner of fish and
190 game, the division of fish and wildlife and the riverways program shall on or before July 1, 2011,
191 complete a detailed inventory of all dams on public and private property in the Commonwealth.
192 The commissioner shall update such dam inventory on an annual basis. The commissioner shall
193 submit the inventory in a report to the joint committee on environment, natural resources and
194 agriculture and to the senate and house committees on ways and means. This report shall include
195 the following detailed information:

196 (1) A comprehensive list of the person, agency, municipality, or entity that
197 owns and operates every dam and the location of every dam where such ownership or operation
198 has been registered with the Office of Dam Safety.

199 (2) A list of specific owners who have failed to meet regulatory requirements,
200 including but not limited to, registration and inspection requirements.

201 (3) A classification of the status of all hazardous dams that pose a threat to
202 public health, safety, welfare, and property or the environment and when or whether they have
203 been repaired, including, where applicable, the presence of polluted and/or hazardous underwater
204 sediment present in the retained area of a dam.

205 (4) A comprehensive list of dams that are abandoned as defined in section 44 of
206 chapter 253 of the General Laws.

207 (5) A comprehensive list of all dams whose existence, condition or operation
208 pose a threat to freshwater animal and plant and resident or migratory fish species habitat or
209 movement.

210 (a) The commissioner must ensure Emergency Action Plans are developed for
211 all High Hazard Dams and Significant Hazard Dams, as defined in regulation. An Emergency
212 Action Plan template shall be developed and available for all dam owners. The commissioner
213 shall ensure that necessary local and state dam safety officials have immediate access to such
214 Plans in the event of a potential dam failure.

215 (b) The commissioner shall develop an inspection schedule, as required by dam
216 safety regulations, to ensure that all High Hazard, Significant Hazard, as Low Hazard Dams, as
217 defined in regulation, are inspected no less than every five years.

218 (c) The Commissioner shall review the hazard classifications of all dams at
219 least every five years, to ensure the accuracy of the dam classification.

220 (d) The Secretary of the Executive Office of Environmental Affairs shall ensure
221 capital funds are available for dam assessment, repair and removal of all dams statewide.

222 (e) The Secretary of Environmental Affairs shall write and implement a
223 \$20,000,000 revolving loan fund for private dam owners to inspect, repair, and remove dams,
224 with the assistance of the Secretary of Administration and Finance. Such Fund shall be paid for
225 through the Capital budget.

226 SECTION 14. Construction.

227 Nothing in this chapter shall be interpreted in any way to alter or amend any permitting
228 requirements, reporting requirements, allocation procedures, or other requirements set forth in
229 any other provision of the general laws.