

**HOUSE . . . . . No. 721**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Anne M. Gobi*

*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 valuing our natural resources.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Anne M. Gobi</i>	<i>5th Worcester</i>	<i>1/18/2013</i>

**HOUSE . . . . . No. 721**

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By Ms. Gobi of Spencer, a petition (accompanied by bill, House, No. 721) of Anne M. Gobi for legislation to further regulate the capturing of furbearing animals. Environment, Natural Resources and Agriculture.

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Thirteen**  
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An Act valuing our natural 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. Chapter 131 of the General Laws is hereby amended by striking out section  
2 80A as so appearing in the 2010 official edition, and inserting in place thereof the following  
3 section:-

4           Section 80A. (a) In this section, the following words shall have the following meanings,  
5 unless the context requires otherwise:-

6           “Applicant” shall mean the applicant or the applicant’s duly authorized agent.

7           “Commissioner”, the commissioner of the department of public health.

8           “Department of public health” or “department”, the department of public health  
9 established pursuant to section 1 of chapter 17.

10           “Municipal board of health”, “board of health” or “board”, the board of health or health  
11 department, in a city or town and its authorized officers; or, other board, district or officer having  
12 like powers of a board of health, including without limitation a health officer of a district formed  
13 by 2 or more municipalities, regional health district consisting of a regional board of health of 2  
14 or more municipalities.

15           “Person”, an individual, association, organization, corporation; the commonwealth, its  
16 divisions, agencies, public or quasi-public, or political subdivisions; other legal entity or  
17 respective agents.

18 (b) No person shall use, set, place or maintain any trap for the purpose of capturing  
19 furbearing mammals, except for common type mouse and rat traps, nets, box or cage type traps,  
20 as otherwise permitted by law. A box or cage type trap is one that confines the whole animal  
21 without grasping any part of the animal, including Hancock or Bailey's type traps for beavers.  
22 Other than nets, common type mouse or rat traps, traps designed to capture and hold a furbearing  
23 mammal by gripping only a part of the mammal's body shall be prohibited, including, steel jaw  
24 leghold traps, padded leghold traps and snares.

25 The above provision shall not apply to the use of prohibited trap devices by the  
26 department of public health, boards of health and other persons as authorized under this section,  
27 for the purpose to protect from threats to public health and safety posed by furbearing mammals,  
28 A threat to public health and safety may include without limitation:

29 (1) beaver or muskrat occupancy of a public water supply;

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31 (2) beaver or muskrat-caused flooding of drinking water wells, well fields or water  
32 pumping stations;

33 (3) beaver or muskrat-caused flooding of sewage beds, septic systems or sewage  
34 pumping stations;

35 (4) beaver or muskrat-caused flooding of a public or private way, driveway, railway  
36 or airport runway or taxi-way;

37 (5) beaver or muskrat-caused flooding of electrical or gas generation plants or  
38 transmission or distribution structures or facilities, telephone or other communications facilities  
39 or other public utilities;

40 (6) beaver or muskrat-caused flooding affecting the public use of hospitals,  
41 emergency clinics, nursing homes, homes for the elderly, schools, fire stations, or other public  
42 safety facilities;

43 (7) beaver or muskrat-caused flooding affecting hazardous waste sites or facilities,  
44 incineration or resource recovery plants or other structures or facilities whereby flooding may  
45 result in the release or escape of hazardous or noxious materials or substances;

46 (8) the gnawing, chewing, entering, or damage to electrical or gas generation,  
47 transmission or distribution equipment, cables, alarm systems or facilities by any beaver or  
48 muskrat;

49 (9) beaver or muskrat-caused flooding or structural instability on property owned or  
50 leased by the applicant if such animal problem poses an imminent threat of substantial property  
51 damage or income loss, which shall be limited to such resulting flooding or instability of: (i)

52 residential, industrial or commercial buildings or facilities; (ii) commercial agricultural lands or  
53 means of access, that prevents normal agricultural practices from being conducted on such lands;  
54 (iii) commercial agricultural lands that may cause or causes a reduction in agricultural  
55 production; and (iv) residential lands in which the board of health, department of public health,  
56 or a federal health department or agency has determined a threat to public health and safety  
57 exists.

58 Any such threat to a public water supply shall be determined by the department of  
59 environmental protection.

60 (c) A board of health shall be authorized to issue an emergency permit to immediately  
61 alleviate a threat to public health and safety posed by a furbearing mammal. A person requesting  
62 a permit shall apply in writing to the board of health of the local jurisdiction where the animal  
63 problem is located. Upon receipt of an application, the board shall make a determination within  
64 10 days whether to grant or deny the requested permit. If the board determines that such threat  
65 exists, it shall immediately issue said permit, for a period not exceeding 10 days. If the permit is  
66 denied, the board shall immediately send to the applicant a written notice of the reason for the  
67 denial with information on the procedure to appeal the adverse determination.

68 Alternatively, a board may transfer the application to the department where the board  
69 determines that the animal problem is occurring in the local municipality and 1 or more adjacent  
70 municipalities. Transfer of an application shall be made within 10 days of its receipt. Upon  
71 transfer, the board shall immediately send written notice to the applicant of the transfer. The  
72 department upon receiving the transferred application shall within 14 days, review and make a  
73 determination whether to issue an emergency permit. If the department determines that a threat  
74 to public health and safety posed by furbearing mammals exists, it shall immediately, issue an  
75 emergency permit to the applicant for a period not exceeding 10 days; or alternatively, direct 1 or  
76 more, boards of health to issue said permit for such period, which a board as directed shall  
77 immediately issue. If the permit is denied, the department shall immediately send to the applicant  
78 a written notice of the reasons for the denial with information on the procedure to request a  
79 hearing.

80 Within 10 days after the denial decision, an applicant may apply in writing to request a  
81 hearing and reconsideration by the department. Upon such request, the department shall without  
82 undue delay, conduct a hearing and within 14 days thereafter, make a determination. Such  
83 determination with the issuance of any emergency permit shall be made in the same manner as  
84 set forth in the prior paragraph; except, no further administrative appeal shall be permitted.

85 (d) If a permit is denied or no determination is rendered within the prescribed period by a  
86 board under subsection (c), the applicant may appeal to the department; provided, a completed  
87 appeal application is filed with the department within 20 days from the date the applicant applied  
88 to the board for the permit. Upon receipt of the application, the department shall within 14 days,

89 review and decide the appeal. If the department determines that such threat exists, it shall  
90 immediately, issue an emergency permit to the applicant for a period not exceeding 10 days; or  
91 alternatively, direct the board to issue said permit for such period, which the board as directed  
92 shall immediately issue. If the appeal is denied, the department shall immediately send to the  
93 applicant a written notice of the reason of the denial with information on the procedure to request  
94 a hearing and reconsideration by the department.

95         Within 10 days after such denial notice issued an applicant may make a written request to  
96 the department for a hearing and reconsideration. The department upon receipt of the request,  
97 shall without undue delay conduct a hearing and within 14 days thereafter, issue a determination.  
98 Such determination with the issuance of any emergency permit shall be issued in the same  
99 manner as set forth in the prior paragraph; except, no further administrative appeal shall be  
100 permitted.

101         Notwithstanding, where a board of health has denied an emergency permit to abate a  
102 beaver or muskrat problem solely that the determined threat to public health and safety is not  
103 caused by beaver or muskrat, the department prior to rendering an appeal decision shall consult  
104 with the division.

105         (e) An emergency permit so issued shall authorize the applicant to immediately remedy  
106 the threat to public health and safety by 1 or more of the following alleviation techniques as  
107 specifically authorized on the permit: (i) the use of conibear or box or cage-type traps, subject to  
108 the regulations promulgated by the division; (ii) the breaching of dams, dikes, bogs or berms, so-  
109 called, subject to determinations and conditions of municipal conservation commissions under  
110 section 40; and (iii) employing any nonlethal management or water-flow devices, subject to  
111 determinations and conditions of municipal conservation commissions under section 40.

112         If the threat to public health and safety has not been alleviated within 10 days, the  
113 applicant in conjunction with the board of health shall first apply to the director for an extension  
114 permit to continue the use of alleviation techniques, as specified in this section, for a period not  
115 exceeding 30 days. If the director after consulting with the department determines that the threat  
116 to public health or safety exists as defined in this section, the director shall immediately issue an  
117 extension permit. In the event the extension permit is denied, the director shall immediately send  
118 to the applicant written notice of the reasons for the denial with information on the process to  
119 request a hearing. An applicant may within 10 days after such denial, apply in writing to request  
120 a hearing and reconsideration by the director. Upon such request, the director shall without  
121 undue delay conduct a hearing and, within 10 days thereafter, make a determination. If such  
122 threat is determined to exist after hearing and reconsideration, the director shall immediately  
123 issue an extension permit for said period; or if the permit is denied, the director shall  
124 immediately send to the applicant a written notice of the reasons for the denial.

125           If the director determines after consulting with the department that the issued extension  
126 permit should be continued for 30 days the director shall within 30 days of such decision  
127 develop, with the assistance of the applicant, board of health and the local municipal  
128 conservation commission a plan to abate the beaver or muskrat problem using alternative,  
129 nonlethal management techniques in combination with water-flow devices, where possible,  
130 subject to the determinations and conditions of the local municipal conservation commissions  
131 under section 40, and if necessary, box and cage type-traps in order to provide a long-term  
132 solution. The director shall take reasonable steps to implement the plan within this 30-day  
133 period.

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135           Compliance with the provisions of any or all of the provisions, under the previous  
136 paragraphs of this subsection, or subsections (c) or (d), shall not preclude the applicant from  
137 applying to the board of health for an additional emergency permit, provided the applicant: (i)  
138 states in writing that there exists on the property an animal problem which poses a threat to  
139 public health and safety, as defined in this section, which cannot reasonably be abated by the use  
140 of alternative, nonlethal management techniques or box or cage traps, and that the applicant has  
141 attempted to abate the animal problem using alternative, nonlethal management techniques or  
142 box or cage traps, or (ii) is awaiting the director's approval for an extension permit.

143           An applicant, awaiting such director's approval shall be eligible for only 2 additional  
144 emergency permits, the first of which shall entitle the applicant the use of all or any of the  
145 alleviation techniques previously allowed under the initial emergency permit. Said first  
146 additional emergency permit shall expire in 10 days. If the director still has not acted within this  
147 10 day period, the applicant shall be eligible for a second additional emergency permit. Said  
148 second additional emergency permit shall entitle the applicant the use of all alleviation  
149 techniques previously allowed in this section, except for the use of conibear traps. The second  
150 additional emergency permit shall expire on the rendering of a decision by the director regarding  
151 the extension permit.

152           The division shall provide a written report annually to the joint committee on the  
153 environment, natural resources and agriculture, on the creation, implementation and efficiency of  
154 such animal problem plans.

155           (f) An applicant issued an emergency or extension permit under this section, shall no later  
156 than 10 days after the expiration of such permit, unless an earlier period is established by other  
157 law or regulation, make a written trapping report to the authority issuing such permit. Such  
158 report shall be in a form and contain the information as prescribed by the department to include,  
159 the type of permit issued; permit dates; authority issuing the permit; animal problem; property  
160 location for which the permit issued; alleviation techniques or methods utilized at each location;  
161 species and number of animals, if any, captured or taken at each location and any other

162 information as may be required by the department. Notwithstanding, an authority issuing a  
163 permit under this section, may impose reasonable reporting requirements of a different time or  
164 interval, which shall be conspicuously stated on the issued permit; provided, such date is no later  
165 than 10 days after the expiration of the permit or other applicable date as required under other  
166 law or applicable regulation.

167 (g) A person may apply to the director for a special permit to use otherwise prohibited  
168 traps on property owned by such person. Issuance of such special permits shall be governed by  
169 regulations adopted by the director under chapter 30A. Such regulations shall include, but not  
170 limited to, provisions relative to the following:

171 The applicant shall apply to the director in writing and shall state that there exists on the  
172 property an animal problem which cannot be reasonably abated by the use of traps other than  
173 those prohibited by this section, and that the applicant has attempted to abate the problem using  
174 traps permitted under this section. If the director after consulting the department of public health,  
175 determines that the applicant has complied with sections 37 and 80, if required to do so, and any  
176 other laws regarding trapping, and that such an animal problem exists which cannot reasonably  
177 be abated by the use of alternative, nonlethal management techniques or traps other than those  
178 prohibited by this section, the director may authorize the use, setting, placing or maintenance of  
179 such traps, not including leghold traps, for a period not exceeding 30 days during which time the  
180 applicant shall remain in compliance with the procedures for obtaining a special permit as set  
181 forth in regulations adopted pursuant to this section. If the requested special permit is denied in  
182 any part, the director shall immediately send to the applicant written notice with the reasons for  
183 the denial with information on the procedure to request a hearing before the division. An  
184 applicant may within 10 days after such denial apply in writing to request a hearing and  
185 reconsideration by the division. Upon receipt of such request, the division without undue delay  
186 shall conduct a hearing and within 30 days thereafter, shall render a determination on such  
187 requested permit. If after consulting with the department, the director decides to issue a special  
188 permit or amend a permit that was issued, such permit or amended permit shall be issued  
189 immediately on such terms and conditions as the director shall determine, consistent with the  
190 provisions of this section and any regulations related to special permits. If after such hearing the  
191 permit is denied in any part, the director shall immediately send to the applicant a written notice  
192 of the reasons for the denial. No later than 10 days after the expiration of an issued special  
193 permit, the applicant shall file a trapping report with the division, in a form prescribed by the  
194 division of similar nature as set forth in subsection (f).

195 (h) The department and division shall promulgate respective regulations necessary for  
196 the administration of this section, including without limitation, a uniform permitting process for  
197 emergency and extension permits requiring the use of standardized forms for applications,  
198 appeals, notices, permits, reports. Such regulations and standardize forms to be used by permit  
199 applicants shall be displayed on each agency's public internet website in a user printable format.

200 The commissioner in consultation with the director shall by regulation establish  
201 administrative procedures for boards of health related to the administration of emergency  
202 permits; and, the transmittal to the department of such administrative information and of trapping  
203 reports received from applicants.

204 The division and department shall develop procedures for the sharing of information  
205 related to permits issued under this section. Periodically, the commissioner and director, or their  
206 representatives, shall together review, and analyze such reported data from boards with any  
207 additional information of both agencies relating to emergency, extension or special permits, to  
208 identify animal control problems in geographical areas deemed to pose a recurrent or constant  
209 threat to public health and safety.

210 For beavers or muskrats, each such indentified animal problem area that is considered to  
211 pose a threat to public health and safety shall be classified as a serious or intermediate threat. If  
212 classified a serious threat, the department shall direct the local boards having jurisdiction to: (i)  
213 immediately issue additional emergency permits, upon proper application, authorizing the  
214 trapping of beavers or muskrats by non-lethal trapping methods, provided any subsequent taking  
215 of the animal is performed in accordance with the regulation of the division and, (ii) authorize  
216 the permanent breaching of beaver or muskrat dams that are determined to pose such threat,  
217 subject to the approval by the local conservation commission; provided, the dam breaching is  
218 done in a manner that prevents flooding, erosion or other downstream property destruction and  
219 provided further, the dam breaching does not reduce excessively upstream water levels that  
220 otherwise, would threaten another species. If classified as an intermediate threat, the local board  
221 having jurisdiction shall upon proper application issue additional emergency permits authorizing  
222 the installation of water level flow devices in those beaver or muskrat dams that are determined  
223 to pose such threat; provided the devices are installed in an environmentally sound manner as  
224 determined by the department in consultation with the division. The issuance of such additional  
225 permits shall follow the administrative procedures and provisions under this section that are  
226 applicable to emergency permits for beaver or muskrat animal problems; except, such additional  
227 permits so authorized shall allow the use of alleviation techniques for the period of time as  
228 directed by the commissioner, notwithstanding any provision to the contrary.

229 On a periodic basis, all beaver or muskrat control problems that have been identified and  
230 classified shall be reviewed to determine if such threat to human health and safety is continuing  
231 and, if so, to reevaluate the threat classification and animal control management methods to be  
232 implemented.

233 (i) The department shall have the supplementary authority to issue emergency for any  
234 period of time, when in the determination of the commissioner, such action to protect public  
235 health and safety is necessary or required to achieve the intent and purpose of this section.



236 (j) An applicant filing for an appeal under this section, shall be permitted to submit with  
237 an application for appeal, any other written documents, explanations and arguments in support of  
238 the appeal, which shall to be considered by authority in deciding such appeal. Appeal hearings  
239 conducted under this section shall be informal without unnecessary or unreasonable delay to  
240 allow a timely determination of the issue; provided however, the appealing party shall be  
241 allowed an adequate opportunity to be heard and present supporting evidence. Notwithstanding  
242 any law to the contrary, sections 10 and 11 of chapter 30A, shall not be applicable to this section.

243 Any person who is aggrieved by a determination or undue delay by a board, division or  
244 department related to the issuance of any permit under this section, where no further  
245 administrative appeal under this section is available, if having proper standing, may obtain  
246 judicial review under section 14 of chapter 30A; notwithstanding, such cases shall be de novo  
247 and the lack of any formal record of the prior administrative proceedings shall not bar such  
248 relief.

249 (k) The trapping prohibitions under section (b) shall not apply to federal departments or  
250 agencies of public health in the protection of public health and safety, or scientific research on  
251 wildlife that is conducted by the department jointly with an accredited academic institution.

252 (l) The provisions of section 79 of this chapter shall not apply to this section.

253

254 (m) Whoever violates any provisions of this section, or any rule or regulation made under  
255 the authority thereof, shall be punished by a fine of not less than \$300, nor more than \$1,000, or  
256 by imprisonment for not more than 6 months, or by both such fine and imprisonment for each  
257 trap unlawfully , used, set, placed, or maintained. Each day of violation shall constitute a  
258 separate offense. A person found guilty of, or convicted of, or assessed in any manner after a  
259 plea of nolo contendere, or penalized for, a second violation of this section shall surrender to an  
260 officer authorized to enforce this chapter any trapping license and problem animal control permit  
261 issued to such person and shall be barred forever from obtaining a trapping license and a problem  
262 animal control permit.