

SENATE No. 356

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 streamflow standards.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---------------------------|--------------------------------|
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>Denise Andrews</i> | <i>2nd Franklin</i> |
| <i>Michael J. Barrett</i> | <i>Third Middlesex</i> |
| <i>Lori A. Ehrlich</i> | <i>8th Essex</i> |
| <i>Sean Garballey</i> | <i>23rd Middlesex</i> |
| <i>James M. Cantwell</i> | <i>4th Plymouth</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> |
| <i>Katherine M. Clark</i> | <i>Fifth Middlesex</i> |
| <i>James Arciero</i> | <i>2nd Middlesex</i> |
| <i>David M. Rogers</i> | <i>24th Middlesex</i> |

SENATE No. 356

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 356) of James B. Eldridge, Denise Andrews, Michael Barrett, Lori A. Ehrlich and other members of the General Court for legislation relative to establishing standards for restoring and maintaining streamflows, 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 SENATE, NO. 349 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to streamflow standards.

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 the 2010
2 Official Edition, is hereby amended by inserting after “Department” the following definition:-

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

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

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

department's regulations shall allow the department in consultation with the division to establish such standards protective of natural aquatic life for a specific river or stream."

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

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

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

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

(10) A demonstration that all feasible means to avoid, or if not possible, to minimize and mitigate impacts of the withdrawal on the natural environment have been taken or will be taken. Mitigation shall occur upstream in the same sub-basin as the withdrawal to the maximum extent practicable, and within the same basin as the withdrawal if such impacts cannot be offset in the same sub-basin. Permittees may enter into agreements with third parties, including the Department of Fish and Game, to implement mitigation required herein.

SECTION 5. Section 39J of chapter 40 of the General Laws, as so appearing, is hereby amended by inserting, in line 15, after the word "protection," the following words:- "all costs or measures to ensure the long-term sustainability of the water supply,".

SECTION 6. Chapter 131 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting, after section 42, the following section:-

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

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

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

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

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

55 These aquatic habitat criteria shall be based on and support the attainment of aquatic
56 habitat goals for water sources defined at an appropriate ecological scale. The division shall, in
57 consultation with the Department of Environmental Protection, the Department of Conservation
58 and Recreation and the Department of Agricultural Resources, define goals necessary to support
59 aquatic health, defined as native, naturally diverse community of aquatic dependent flora and
60 fauna. These goals shall be based on the best available science about the conditions necessary to
61 support native, naturally diverse communities of aquatic dependent flora and fauna including, but
62 not limited to, fluvial, coldwater and migratory fish, found, or expected to be naturally found, in
63 the water sources and the river and coastal watersheds within which they are found.

64 The division shall describe and define the range of existing aquatic habitat conditions
65 currently found in Massachusetts, and shall, as necessary, update this condition assessment.
66 Such conditions shall be based on the best available and using appropriate and generally
67 accepted statistical methods.

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