SENATE DOCKET, NO. 730 FILED ON: 1/17/2013

SENATE . . . . . No. 373

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas P. Kennedy

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 conservation practices.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas P. Kennedy	*Second Plymouth and Bristol*

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SENATE . . . . . No. 373

By Mr. Kennedy, a petition (accompanied by bill, Senate, No. 373) of Thomas P. Kennedy for legislation relative to sustainable water conservation practices. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to sustainable water conservation practices.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws, as appearing in the 2010 Official Edition, is hereby amended in Chapter 21A by adding at the end thereof the following new sections:-

Section 24. Definitions applicable to sections 24 through 24j

"Board", the irrigation contractor board of registration.

"Business permit", a business that holds a permit as approved by the board entitling it to be called by the title "irrigation contracting business" and which employs at least one irrigation contractor, certified under the provisions of this act.

"Irrigation contracting", the construction, installation, repair, maintenance, improvement, winterization and alteration of any portion of an irrigation system.

"Irrigation contractor", a person who holds a certificate entitling him to be called by the title "irrigation contractor" in the commonwealth under the authority of chapter 21G..

"Irrigation system", any assemblage of components, materials or special equipment which is constructed and installed underground or on the surface for controlled dispersion of water from any safe and suitable source, for the purpose of irrigating landscape vegetation or the control of dust and erosion on landscaped areas, including integral pumping systems and including required wiring within that system and connection to a public or private water supply system under the terms and conditions of a contract. An irrigation system, when connected to a potable water supply, shall include a connection beginning at the downstream side of a properly

installed backflow prevention device as required under 248 CMR 10.00. An irrigation system shall not include plumbing or a plumbing system as defined in Chapter 142 of the General Laws.

"Professional irrigation consultant", an independent irrigation designer responsible for the preparation of irrigation system plans and specifications, the observation of system construction and recommendations for irrigation management and who is a certified irrigation designer and derives more than eighty percent of their income from professional consulting including irrigation related training..

Section 24a. Irrigation Contractor Board of Registration

There shall be within the executive office of energy and environmental affairs an irrigation contractor board of registration which shall consist of the secretary of the executive office of energy and environmental affairs, or his designee, and six members to be appointed by the governor, citizens of the commonwealth, three of whom shall have been engaged in the irrigation contracting industry for a period of five years or more prior to their appointment and who hold a certified irrigation contractor or certified irrigation designer designation in good standing with a nationally recognized association, one of whom shall be an employee of the university of massachusetts extension school and who has expertise in soil and horticulture, one of whom shall be a full time professional irrigation consultant, and one of whom shall be a representative of the public who is a registered professional engineer, architect, or landscape architect.

Each appointive member shall be appointed for a term of four years, except for persons appointed to fill vacancies who shall serve for the unexpired term. As the term of office of a member of the board expires, his successor shall be appointed in like manner for a term of four years. Any vacancy in the membership occurring other than by expiration of a term shall be filled in the same manner as the original appointment, but for the expired term only. Each member shall continue to serve until the qualification of his successor. The governor may also fill any vacancy in the board for the unexpired portion of the term.

The board shall hold at least two regular meetings each year and may hold such special meetings as it may determine. At the first regular meeting each year, the board shall organize and choose a chairman who shall be a member of the board and a secretary who may, but need not, be a member of the board. At all meetings of the board a quorum shall consist of four members.

The members of the board shall serve without compensation. Each member shall receive from the commonwealth the necessary travel and other expenses actually incurred by him in the performance of his duties.

Section 24b. Registration of irrigation contractors

53 (a) No person shall construct, install, repair, maintain, activate, winterize or alter any
54 portion of an irrigation system in the commonwealth nor shall they represent themselves to be an
55 irrigation contractor or use the title irrigation contractor in the commonwealth on any
56 advertisement, sign, title, card or other device to indicate that such person is a irrigation
57 contractor, unless registered with the approval of the board. A person may construct, install,
58 repair, maintain, activate, winterize or alter any portion of an irrigation system in the
59 commonwealth if under the direct supervision of a registered irrigation contractor. Every holder
60 of a certificate of such registration shall display it in a conspicuous place in his principal office
61 or place of employment, and on any specifications or plans specifically used in the development,
62 management and installation of an irrigation system and on all advertisements, signs, tiles, cards
63 and must display their registration number on any vehicles used for such commercial purposes.

64 (b) It shall be the duty of the board to issue and deliver a certificate of registration to all
65 applicants who have been approved for registration.

66 Section 24c. Registration applications; required information

67 In order to be registered as an irrigation contractor, an applicant shall make written
68 application under oath to the board on a form provided by him. Said application shall include but
69 may not be limited to verification that that they are at least eighteen years of age; are a citizen of
70 the United States or have legally declared their intention of so becoming; has education and
71 training equivalent to industry standards and guidelines relative to modern water management
72 skills and techniques for irrigated agriculture, turf, and landscape; is an irrigation contractor
73 certified and in good standing with a nationally recognized association and, whether the
74 applicant has ever been previously registered in the commonwealth as an irrigation contractor
75 pursuant to this chapter, under what other names he was previously registered, whether there
76 have been previous judgments or arbitration awards against him, whether there is money owing
77 to the fund on account of such judgments or awards against him, and whether his registration has
78 ever been suspended or revoked. Every applicant for registration as an irrigation contractor shall
79 be required, in addition to all other requirements, to establish, by written examination, his
80 competency to plan, construct, manage, install and supervise the installation of irrigation
81 systems. Each written examination may be supplemented by such oral examinations as the board
82 shall determine.

83 Section 24d. Continuing education

84 The board shall establish continuing education standards and requirements for the
85 renewal of an irrigation contractor certificate, including the subject matter, type and number of
86 credits required for each renewal. The department shall approve qualifying, continuing education
87 programs including but not limited to programs provided by accredited educational institutions
88 or relevant professional and technical associations. The department may waive continuing

education requirements required under this act on an individual basis for reasons of illness, undue hardship, disability, retirement or other cause it deems appropriate.

Section 24e. Exemptions

The following shall not be required to be registered as an irrigation contractor pursuant to this chapter:

(a) An employee working under the direct supervision of a registered irrigation contractor;

(b) A homeowner who installs an irrigation system at his or her place of residence;

(c) Anyone in the employ of a golf course for the purpose of maintaining or repairing an existing irrigation system; and

(d) Anyone installing an irrigation system to irrigate field crops, grain, soy beans, hay, fruits, vegetables, Christmas trees, horticultural specialties to be offered for sale, including nursery stock, ornamental shrubs, ornamental trees, flowers, and turf on turf farms;

(e) Vendors of irrigation contracting components, materials, or equipment who perform only such functions as delivery, rendering of advice or assistance in the installation or normal warranty service or exchange of defective or damaged goods;

(f) Duly certified and in good standing registered landscape architectural firms, professional engineering firms or irrigation consulting firms providing only design and oversight services of irrigation system projects on a full time basis.

Section 24f. Business permits; necessity; display

No firm, partnership or corporation shall represent themselves as an irrigation contracting business or use the title irrigation contracting business in the commonwealth on any advertisement, sign, title, card or other device to indicate that such person is an irrigation contracting business, unless such firm, partnership or corporation shall have secured from the board a business permit as an irrigation contracting business or is acting under the direct supervision of a registered irrigation contractor. Every holder of a business permit shall display it in a conspicuous place in its principal office. Nothing herein shall be construed to prevent a firm, partnership or corporation from using the title “irrigation contractor” or “irrigation contractors”, or similar title provided that the practice of irrigation contracting by such firm, partnership or corporation shall be under the professional and supervisory control of a person registered as a irrigation contractor and the entity holds a valid business permit.

Section 24g. Qualifications for business permits

121 In order to register for an original business permit or renewal of a business permit,
122 applicants are required to provide proof of liability and workers compensation policies, and that
123 at least one registered irrigation contractor is employed by the applicant. Said proof of insurance
124 shall be completed on a form provided or approved by the board and shall be issued in the name
125 of the business permit holder. The board shall be listed as a certificate holder and notified in any
126 lapses of coverage.

127 Section 24h. Certificate of registration and business permit fees

128 Applicants for certificates of registration and for business permits shall pay a fee, to be
129 established bi-annually by the secretary for administration and finance pursuant to section three
130 B of chapter seven and shall be paid to the board on or before the thirty-first day of January of
131 every other year.

132 Each initial certificate of registration issued in accordance with this act shall expire on
133 January 31 of the second calendar year following issuance. All certificates of registration issued
134 thereafter shall remain valid for a period of two years and shall expire January 31of the second
135 calendar year. A new permit issued anytime after the January 31 issuance date shall remain valid
136 until the regular January 31 date of expiration.

137 The board may assess a penalty to be added to the amount of the certificate for delinquent
138 payments.

139 Failure to renew certificate of registration within sixty days after notification by the board
140 that said certificate has expired, shall require such applicant to register anew and may require re-
141 examination, subject to the discretion of the board.

142 Fees for duplicate certificates shall also be established bi-annually by the secretary for
143 administration and finance and shall be collected at the time of the request for such documents.

144 Fees for business permits shall be determined bi-annually by the secretary for
145 administration and finance pursuant to section three B of chapter seven and shall be paid to the
146 board. Each initial business permit issued in accordance with this act shall expire on January 31
147 of the second calendar year following issuance. All permits issued thereafter shall remain valid
148 for a period of two years and shall expire January 31of the second calendar year. A new permit
149 issued anytime after the January 31 issuance date shall remain valid until the regular January 31
150 date of expiration.

151 Section 24i. Suspension, revocation or refusal of certificates and business permits; re-
152 issuance

153 The board may refuse to issue, renew, suspend or revoke the certificate of registration or
154 business permit upon proof satisfactory to the board:

155 (a) that the holder of such certificate of registration or business permit is in violation of
156 any provision of any rule or regulation promulgated by the board;

157 (b) that such certificate of registration or business permit was obtained by fraud or
158 misrepresentation;

159 (c) that any money or thing of value, except fees prescribed or authorized by said
160 sections, was paid or received to secure the issuance of such certificate of registration or business
161 permit;

162 (d) that the holder of such certificate of registration or business permit has been guilty of
163 a felony;

164 (e) that the holder of such certificate of registration or business permit has been guilty of
165 fraud or deceit, or of gross negligence, incompetence or misconduct, in the use of the title of
166 irrigation contractor; or

167 (f) that the holder of such certificate of registration or business permit has permitted or
168 suffered his certificate to be affixed to any system plans or specifications that were not prepared
169 by him or under his personal supervision by his regularly employed subordinates.

170 The board may reissue a certificate of registration or business permit to any person whose
171 certificate of registration or business permit has been revoked. Application for the re-issuance of
172 a certificate of registration or business permit shall be made in such manner as the board may
173 direct.

174 Section 24j. Powers and Duties of the Irrigation Contractor Board of Registration

175 The board shall review applications for certification, develop and conduct the proper
176 examinations for certification, register and issue certificates of registration, take appropriate
177 disciplinary action, including but not limited to the assessment of penalties or the suspension or
178 revocation of said certification, require continuing education requirements, and maintain a
179 current roster of registered irrigation contractors in the commonwealth.

180 The board shall review applications for business permits, issue business permits to firms,
181 partnerships or corporations engaged in the business of irrigation contracting and define any
182 restrictions or requirements regarding the use of such permit.

183 The board shall take appropriate disciplinary action, including but not limited to the
184 assessment of penalties or the suspension or revocation of said business permit, and maintain a
185 current roster of permitted irrigation contracting businesses in the commonwealth.

186 The board may adopt, amend and rescind such rules and regulations, not inconsistent
187 with other provisions of the General Laws, as deems necessary to carry out the provisions of this
188 chapter.

189 Section 24k. Unlawful conduct; penalties

190 It shall be unlawful for any person to:

191 (a) hold himself as an irrigation contractor unless he is registered under the provisions of
192 this chapter;

193 (b) present as his own the certificate of registration of another;

194 (c) give false or forged evidence to the board of registration or any member thereof in
195 obtaining a certificate;

196 (d) falsely impersonate any other registrant of like or different name;

197 (e) use or attempt to use a certificate of registration that has been revoked; or

198 (f) otherwise violate any of the provisions of said sections.

199 A fine of not less than fifteen hundred dollars nor more than twenty five hundred dollars,
200 or by imprisonment for not more than one year, or both shall be set for a first offense. A fine of
201 not less than twenty five hundred dollars nor more than five thousand dollars, or by
202 imprisonment for not more than two year, or both shall be set for each and every subsequent
203 offense. Violations shall be considered unfair and deceptive acts and subject to the provisions of
204 Chapter 93A of the General Laws.