

# **HOUSE . . . . . No. 4165**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, April 6, 2016.

The committee on Environment, Natural Resources and Agriculture to whom were referred the petition (accompanied by bill, House, No. 658) of Carolyn C. Dykema and others that the Department of Fisheries, Wildlife and Environmental Law Enforcement be directed to promulgate regulations relative to wildlife and management of natural and water resources, the petition (accompanied by bill, House, No. 709) of Stephen Kulik and others for legislation to regulate the use of trapping devices to take beaver and muskrat, and the joint petition (accompanied by bill, House, No. 3623) of William M. Straus, Viriato Manuel deMacedo and others relative to capturing and trapping furbearing mammals, reports recommending that the accompanying bill (House, No. 4165) ought to pass [Representative Mannal of Barnstable dissenting].

For the committee,

PAUL A. SCHMID, III.

**HOUSE . . . . . No. 4165**

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**The Commonwealth of Massachusetts**

**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**

An Act relative to the Department of Fisheries and Wildlife.

*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, as appearing in the 2014 Official  
2 Edition, is hereby amended by striking out section 80A and inserting in place thereof the  
3 following section:-

4           Section 80A. Notwithstanding any other provision of this chapter, a person shall not use,  
5 set, place, maintain, manufacture or possess any trap for the purpose of capturing furbearing  
6 mammals, except for common type mouse and rat traps, nets, and box or cage type traps, as  
7 otherwise permitted by law. A box or cage type trap is one that confines the whole animal  
8 without grasping any part of the animal, including Hancock or Bailey’s type live trap for  
9 beavers. Other than nets and common type mouse or rat traps, traps designed to capture and hold  
10 a furbearing mammal by gripping the mammal’s body, or body part are prohibited, including  
11 steel jaw leghold traps, padded leghold traps, and snares.

12           The above provision shall not apply to the use of prohibited devices by federal and state  
13 departments of health, the division or municipal boards of health for the purpose of protection

14 from threats to human health and safety. A threat to human health and safety may include, but  
15 shall not be limited to:

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

17 (b) beaver or muskrat-caused flooding of drinking water wells, well fields or water  
18 pumping stations;

19 (c) beaver or muskrat-caused flooding of sewage beds, septic systems or sewage pumping  
20 stations;

21 (d) beaver or muskrat-caused flooding of a public or private way, driveway, railway or  
22 airport runway or taxi-way;

23 (e) beaver or muskrat-caused flooding of electrical or gas generation plants or  
24 transmission or distribution structures or facilities, telephone or other communications facilities  
25 or other public utilities;

26 (f) beaver or muskrat-caused flooding affecting the public use of hospitals, emergency  
27 clinics, nursing homes, homes for the elderly or fire stations;

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

31 (h) the gnawing, chewing, entering, or damage to electrical or gas generation,  
32 transmission or distribution equipment, cables, alarm systems or facilities by any beaver or  
33 muskrat;

34 (i) beaver or muskrat-caused flooding or structural instability on property owned by the  
35 applicant if such animal problem poses an imminent threat of substantial property damage or  
36 income loss, which shall be limited to: (1) flooding of residential, commercial, industrial or  
37 commercial buildings or facilities; (2) flooding of or access to commercial agricultural lands  
38 which prevents normal agricultural practices from being conducted on such lands; (3) reduction  
39 in the production of an agricultural crop caused by flooding or compromised structural stability  
40 of commercial agricultural lands; (4) flooding of residential lands in which the municipal board  
41 of health, its chair or agent or the state or federal department of health has determined a threat to  
42 human health and safety exists. The department of environmental protection shall make any  
43 determination of a threat to a public water supply.

44 An applicant or his duly authorized agent may apply to the division for alleviation of a  
45 threat to human health and safety by a beaver and muskrat control officer.

46 The division shall license beaver and muskrat control officers for the purpose of  
47 alleviating threats to human health and safety. This licensure process shall include, at a  
48 minimum, training in the assessment, identification and alleviation of threats to public health and  
49 safety, as defined in the third paragraph. The division shall establish the training and licensure  
50 process for beaver and muskrat control officers. Said officers shall be authorized to identify and  
51 alleviate threats to human health and safety, using 1 or more of the following options, provided  
52 that a beaver and muskrat control officer shall use the most humane option available in  
53 accordance with best practices: (a) the use of conibear or box or cage-type traps, subject to the  
54 regulations promulgated by the division; (b) the breaching of dams, dikes, bogs or berms, so-  
55 called, subject to determinations and conditions of municipal conservation commissions under

56 section 40; and (c) employing any non-lethal management or water-flow devices, subject to  
57 determinations and conditions of municipal conservation commissions under section 40.

58 Prior to conducting any activity to alleviate a threat to human health and safety a beaver  
59 and muskrat control officer shall: (a) provide written notification to the local board of health, no  
60 less than 24 hours prior to employing any technique unless a shorter period is allowed by the  
61 board of health, identifying the threat to human health and safety, the location and specific  
62 technique to be employed; (b) obtain all required determinations and conditions from local  
63 conservation commissions under section 40 for breaching dams, dikes, bogs or berms, so-called,  
64 and the employment of non-lethal management or water flow devices; (c) obtain written  
65 approval for the alleviation activity from the department of environmental protection, if the  
66 threat is to a public water supply; and (d) obtain written permission from the owner or leasee of  
67 the property on which the alleviation will occur.

68 The division shall report to the joint committee on natural resources and agriculture  
69 annually, on or before March 1, on the activity of beaver and muskrat control officers in each  
70 city and town.

71 The division shall, in conjunction with the department of public health, issue regulations  
72 establishing, at a minimum: (a) the process by which individuals may apply for alleviation of a  
73 threat to human health and safety; (b) training and licensure requirements for beaver and muskrat  
74 control officers; and (c) a standard process by which beaver and muskrat control officers may  
75 alleviate threats to human health and safety.

76 Whoever violates any provisions of this section, or any rule or regulation made under the  
77 authority thereof, shall be punished by a fine of not less than \$300 nor more than \$1,000, or by

78 imprisonment for not more than 6 months, or by both such fine and imprisonment for each trap  
79 possessed, used, set, placed, maintained or manufactured. Each day of violation shall constitute a  
80 separate offense. A person found guilty of, or convicted of, or assessed in any manner after a  
81 plea of nolo contendere, or penalized for, a second violation of this section shall surrender to an  
82 officer authorized to enforce this chapter any trapping license and problem animal control permit  
83 issued to such person and shall be barred forever from: (a) obtaining a trapping license; obtaining  
84 a problem animal control permit; or (c) being licensed as a beaver and muskrat control officer.

85           SECTION 2. The division of fisheries and wildlife shall, in conjunction with the  
86 department of public health, issue regulations pursuant to section 80A of chapter 131 of the  
87 General Laws no later than 6 months after the effective date of this act.