HOUSE DOCKET, NO. 2990 FILED ON: 1/16/2015

HOUSE . . . . . No. 757

The Commonwealth of Massachusetts

PRESENTED BY:

Frank I. Smizik

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:
Frank I. Smizik	*15th Norfolk*
James B. Eldridge	*Middlesex and Worcester*
Louis L. Kafka	*8th Norfolk*
Peter V. Kocot	*1st Hampshire*
Lori A. Ehrlich	*8th Essex*
Ruth B. Balser	*12th Middlesex*
Jonathan Hecht	*29th Middlesex*
James M. Cantwell	*4th Plymouth*

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By Mr. Smizik of Brookline, a petition (accompanied by bill, House, No. 757) of Frank I. Smizik and others for legislation to develop science-based stream-flow standards. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *806* OF 2013-2014.]

The Commonwealth of Massachusetts

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

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:

SECTION 1. Section 2 of Chapter 21G of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after "Department" the following definition:-

"Division", the division of fisheries and wildlife.

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

"Pursuant to chapter 30A, the department, after consultation with the advisory committee and with the approval of the commission and the director of the division, shall adopt, and thereafter from time to time may amend, regulations establishing standards for restoring and 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
15 department's regulations shall allow the department in consultation with the division to establish
16 such standards protective of natural aquatic life for a specific river or stream."

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

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

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

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

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

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

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

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

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

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

49 (b) Be based to the extent practical on the site specific attributes of water sources and
50 the river and coastal watersheds within which they are contained and shall provide, to the extent

51 possible, site-specific guidelines and monitoring requirements at the appropriate ecologic and
52 hydrologic scales.

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

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

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

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