

HOUSE No. 4884

The Commonwealth of Massachusetts

SO MUCH OF THE MESSAGE

FROM

HIS EXCELLENCY THE GOVERNOR

RETURNING THE ENGROSSED BILL PROMOTING CLIMATE

CHANGE ADAPTATION, ENVIRONMENTAL AND NATURAL

RESOURCE PROTECTION, AND INVESTMENT IN RECREATIONAL

ASSETS AND OPPORTUNITY

(SEE HOUSE, NO. 4835)

AS RELATES TO A SECTION RETURNED

WITH DISAPPROVAL

UNDER THE PROVISIONS OF

SECTION 5 OF ARTICLE LXIII

AND SECTIONS RETURNED WITH

RECOMMENDATIONS OF AMENDMENTS

UNDER THE PROVISIONS OF ARTICLE LVI

OF THE AMENDMENTS TO THE CONSTITUTION.

August 9, 2018.

The Commonwealth of Massachusetts



CHARLES D. BAKER
GOVERNOR

KARYN POLITO
LIEUTENANT GOVERNOR

EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133
(617) 725-4000

August 9, 2018.

To the Honorable Senate and House of Representatives:

Pursuant to Section 5 of Article LXIII, as amended by Article XC, Section 4 of the Amendments to the Constitution, I am today signing House Bill 4835, “An Act Promoting Climate Change Adaptation, Environmental and Natural Resource Protection, and Investment in Recreational Assets and Opportunity,” and returning certain portions to you for reconsideration.

I announced the filing of this legislation in Scituate, a community hit particularly hard by this past March’s storms. While Scituate faces challenges that inland communities do not, all of the Commonwealth’s cities and towns must prepare for the impacts of climate change. In addition to investments in safeguarding residents, municipalities and businesses from the impacts of climate change, protecting environmental resources, and investing in communities, the legislation makes permanent important aspects of Executive Order 569, in which I outlined a statewide, integrated strategy to work across the Commonwealth and with cities and towns to build resiliency to climate change. I am grateful to the Legislature for acting on this bill and authorizing over \$200 million to support new climate change adaptation initiatives, including \$75 million for the Municipal Vulnerability Preparedness Program and \$100 million to implement a first in the nation state hazard mitigation and climate adaptation plan. This legislation also includes over \$400 million in capital authorization for recreational facilities throughout the Department of Conservation and Recreation. These funds, along with other funds targeted at environmental protection and investments in our communities will help build a cleaner, more sustainable, more resilient Commonwealth..

This legislation also features a number of policy provisions, many proposed by my administration and others added during the legislative process. Of the 101 outside sections presented in this legislation, I am signing 95, vetoing one and amending five.

Therefore:

- I am disapproving section 6 of House Bill 4835 because it shifts regulatory oversight of agricultural composting from the Department of Agricultural Resources to the Department of Environmental Protection. The Department of Agricultural Resources is the agency best suited to regulating and inspecting composting operations that take place on farms. Our administration is committed to exploring whether programmatic changes at the Department of Agricultural Resources, including the hiring of additional staff to perform inspections, could improve the agricultural composting process for both farmers and their neighbors;
- Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth, I am returning sections 22, 90, 92, 94, and 95 with recommendations for amendment. My reasons for doing so and the recommended amendments are set forth in separate letters dated today which are included with this message as Attachments A to E, inclusive; and
- The remainder of this bill I approve.

Respectfully submitted,

CHARLES D. BAKER,
Governor.

The Commonwealth of Massachusetts



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LIEUTENANT GOVERNOR

EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133
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— ATTACHMENT A —

August 9, 2018.

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 22 of House Bill 4835, “An Act Promoting Climate Change Adaptation, Environmental and Natural Resource Protection, and Investment in Recreational Assets and Opportunity.”

Section 22 expands distribution of raw milk in the Commonwealth by allowing the delivery of unpasteurized milk, by allowing dairy farmers to sell unpasteurized milk at non-contiguous farm stands, and by allowing distribution of unpasteurized milk through community-supported agriculture systems (CSAs).

Consumption of unpasteurized milk can result in foodborne illness and possible death due to bacterial infections, especially among infants, children, pregnant women, immunosuppressed patients, and the elderly. The risk of foodborne illness due to consumption of raw milk increases with the number of people handling the raw milk prior to consumption, and the length of time between production and consumption. As such, it is important that any expansion of the sale of raw milk in the Commonwealth be done in such a way that it protects those who choose to consume it.

For these reasons, I recommend that the bill be amended by striking out section 22 and inserting in place thereof the following 4 sections:-

SECTION 22. Section 13 of chapter 94 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the word “same”, in line 10, the following words:- ; provided, however, that such rules and regulations shall not permit transportation of milk intended for human consumption prior to pasteurization off the site of the farm at which such milk was produced and shall not govern licensure requirements and processes, or sanitary and operational standards for milk intended for human consumption prior to pasteurization that is sold off the site of the farm at which such milk was produced.

SECTION 22A. Said section 13 of said chapter 94 is hereby further amended by adding the following paragraph:-

The commissioner of public health shall, subject to chapter 30A, adopt and promulgate rules and regulations to reduce the risk of milk-borne illness associated with the consumption of unpasteurized milk that is sold off the site of the farm at which such milk was produced. Such rules and regulations may include, but shall not be limited to, the sanitary and operational standards for the transportation, receiving, handling, storage, processing, packaging, labeling, and sale of milk intended for human consumption prior to pasteurization. Such rules and regulations shall consider applicable publications of the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services, or any successor agency with like regulatory powers; provided, however, that the commissioner of public health may adopt more stringent standards in order to minimize the risk of milk-borne illness to the public. Such regulations shall allow the sale of milk intended for human consumption prior to pasteurization at a farm stand owned or operated by the producer of said milk that is not on the site of the farm at which the milk was produced.

SECTION 22B. Said chapter 94 is hereby further amended by inserting after section 305E the following section:-

Section 305F. For the purposes of this section, “raw milk” shall mean milk that is intended for human consumption prior to pasteurization.

The commissioner of public health shall issue and may renew on an annual basis a license to every producer of raw milk authorizing the sale of said raw milk at a farm stand owned or operated by said producer; provided, that said license shall not be required when the farm stand is on the site where the raw milk was produced. The fee for the license and for each annual renewal thereof shall be determined annually by the secretary of administration under section 3B of chapter 7.

Any person who violates this section shall be punished by a fine, as set forth in regulation.

The commissioner of public health may make such rules and regulations as may be necessary for the enforcement of this section. Such rules and regulations may include, but shall not be limited to, the sanitary and operational standards for the production, transportation, receiving, handling, storage, processing, packaging, labelling, and sale of

milk intended for human consumption prior to pasteurization. Such rules and regulations shall consider applicable publications of the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services, or any successor agency with like regulatory powers; provided, however, that the commissioner of public health may adopt more stringent standards in order to minimize the risk of milk-borne illness to the public.

SECTION 22C. Sections 22, 22A, and 22B shall take effect on July 1, 2020.

Respectfully submitted,

CHARLES D. BAKER,
Governor.

The Commonwealth of Massachusetts



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GOVERNOR

KARYN POLITO
LIEUTENANT GOVERNOR

EXECUTIVE DEPARTMENT
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— ATTACHMENT B —

August 9, 2018.

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 90 of House Bill 4835, “An Act Promoting Climate Change Adaptation, Environmental and Natural Resource Protection, and Investment in Recreational Assets and Opportunity.”

Section 90 authorizes the Mohawk Trail Woodlands Partnership Fund (the “Fund”), created under Section 89, to receive funds from general appropriations, capital expenditure authorizations, grants or a combination thereof to support the work of the Mohawk Trail Woodlands Partnership (the “Partnership”) created under Section 91.

I strongly support the designation of the Mohawk Trail Woodlands Partnership in statute. This designation represents an innovative partnership between the public and private sectors, bringing together municipalities and local and state environmental and economic development organizations to increase the stewardship of local forests and expand tourism and other economic opportunities in Berkshire and Franklin counties.

I applaud the goals of the Partnership and am signing sections 89 and 91 to ensure that the Partnership may begin its important work. However, I am returning with amendment Section 90 in order to ensure that should the Partnership make use of the Fund, which will be created on the books of the Commonwealth, it is able to administer the Fund in compliance with state finance laws and in a manner that ensures that administration of the Fund is subject to the laws providing for transparency and

accountability for the use of public money. While transparency and accountability are vital, the precise mechanism for achieving these goals is less important and, to that end, I look forward to working with the Legislature, interested stakeholders and the United States Forest Service to explore any other proposals or alternatives that enable the Partnership to fulfill its ambitious mandate.

SECTION 90. To capitalize the Mohawk Trail Woodland Partnership Fund established in section 89 and support the goals of the Mohawk Trail Woodland Partnership, the Partnership may receive funds from general appropriations, capital expenditure authorizations, grants or a combination thereof; provided, however, that upon any monies from any source being credited to the Fund, meetings of the Partnership Board and its executive committee shall be subject to sections 18 to 25, inclusive, of chapter 30A of the General Laws and all officers, directors, and agents of the Partnership, including all officers, directors and employees of any administrative agent or fund manager designated by said Partnership under paragraph (6) of subsection (e) of section 91, shall, in connection with their service for the Partnership: (i) comply with all applicable state finance laws; (ii) be considered officers or employees of an agency, commission or authority of the commonwealth for purposes of clause Twenty-sixth of section 7 of chapter 4 of the General Laws; and (iii) be considered special state employees for purposes of chapter 268A of the General Laws.

Respectfully submitted,

CHARLES D. BAKER,
Governor.

The Commonwealth of Massachusetts



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GOVERNOR

KARYN POLITO
LIEUTENANT GOVERNOR

EXECUTIVE DEPARTMENT
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— ATTACHMENT C —

August 9, 2018.

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 92 of House Bill 4835, “An Act Promoting Climate Change Adaptation, Environmental and Natural Resource Protection, and Investment in Recreational Assets and Opportunity.”

Section 92 establishes a special commission to study and report on the feasibility of transferring ownership of Willett Pond and its appurtenances to the Department of Conservation and Recreation (DCR) to provide new public access for outdoor recreation and preserve the species and ecosystem of the pond. The study must also examine the costs related to the transfer.

Willett Pond is one of several bodies of water in the Commonwealth with a privately-held dam. DCR expects that if it were to assume ownership of the dam, the Commonwealth would incur significant costs associated with making much-needed capital improvements. While expending public funds would address any issues associated with this particular dam, there are approximately a dozen other similarly situated privately-held dams around the Commonwealth. Any efforts to address issues relating to these structures with public funds should ensure that like properties are treated alike. Accordingly, to properly assess the costs associated with this and other similar properties, I suggest that the scope of this study be broadened to include a comprehensive assessment of all privately held dams that are in need of repair and pose a high public safety risk to the public. DCR is best suited to conduct this study, taking into

consideration the input of private dam owners and other stakeholders, without the need for a special commission.

For this reason, I recommend that Section 92 be amended by striking out the text and inserting in place thereof the following text:-

SECTION 92. The department of conservation and recreation shall conduct a study of the condition of all privately owned dams in the commonwealth that are designated by the department as “high hazard” and in poor or unsafe condition. The study shall examine and report on the needed capital improvements at such dams and evaluate possible funding mechanisms to support capital improvements, including federal, state, local and private funding opportunities. The department shall solicit input from affected dam owners and other stakeholders in completing the study, and shall submit its final report together with recommendations, including drafts of any proposed legislation, to the clerks of the house of representatives and the senate by July 1, 2019.

Respectfully submitted,

CHARLES D. BAKER,
Governor.

The Commonwealth of Massachusetts



CHARLES D. BAKER
GOVERNOR

KARYN POLITO
LIEUTENANT GOVERNOR

EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133
(617) 725-4000

— ATTACHMENT D —

August 9, 2018.

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 94 of House Bill 4835, “An Act Promoting Climate Change Adaptation, Environmental and Natural Resource Protection, and Investment in Recreational Assets and Opportunity.”

Section 94 directs the Massachusetts Department of Transportation (MassDOT) to issue a report on roadway lighting and lighting operational costs, including an analysis of lighting operational costs, accepted best practices for roadway lighting, and a plan to reduce lighting operational costs through replacement of lower-wattage or unnecessary roadway lighting.

While I agree that a report on these issues could be helpful to guide policymakers, MassDOT reports that a deadline of January 1, 2019 does not provide the department with enough time to complete the report and is seeking nine months to complete the report. For this reason, I recommend that Section 94 be amended by striking out the words “January 1” and inserting in place thereof the following words:- May 10.

Respectfully submitted,

CHARLES D. BAKER,
Governor.

The Commonwealth of Massachusetts



CHARLES D. BAKER
GOVERNOR

KARYN POLITO
LIEUTENANT GOVERNOR

EXECUTIVE DEPARTMENT
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— ATTACHMENT E —

August 9, 2018.

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 95 of House Bill 4835, “An Act Promoting Climate Change Adaptation, Environmental and Natural Resource Protection, and Investment in Recreational Assets and Opportunity.”

Section 95 establishes a special commission to scope a state grant or low interest loan program for structural elevation or acquisition of properties prone to flooding. The special commission is tasked with providing a draft scope, together with any additional recommendations and draft legislation, to the legislature by December 1, 2019, and a final scope with recommendations by December 1, 2020.

I support the Legislature’s efforts to explore mechanisms for state funding to support resiliency and adaptation projects. Since a significant portion of the properties prone to flooding likely represents coastal properties, I believe the special commission’s work would be enhanced if the agencies and entities with direct expertise in coastal zone management and climate change adaptation were given representation and a leadership role on this special commission. The special commission should also coordinate its work with the integrated state hazard mitigation and climate adaptation plan.

For these reasons, I recommend that Section 95 be amended by striking out subsections (a) and (b) and inserting in place thereof the following 2 subsections:-

(a) Notwithstanding any special or general law, there shall be a special commission, established and governed by section 2A of chapter 4 of the General Laws, to

scope a state grant or low-interest loan program for structural elevation or acquisition of properties prone to flooding in the commonwealth. Components of consideration for the structure of the program shall include: (i) funding sources; (ii) eligible expenses; (iii) applicant eligibility; (iv) the establishment of a cost-benefit analysis in determining applicant eligibility; (v) risks and hazards identified in the integrated state hazard mitigation and climate adaptation plan and strategies to build resiliency; and (vi) program expenditures and pay outs.

(b) The special commission shall consist of: the secretary of energy and environmental affairs or a designee, who shall serve as the commission chair; 2 members of the house of representatives, 1 of whom shall be appointed by the minority leader; 2 members of the senate, 1 of whom shall be appointed by the minority leader; the chair of the state board of building regulation and standards or a designee; the director of the office of coastal zone management or a designee; 2 persons to be appointed by the director of the Massachusetts Emergency Management Agency, 1 of whom shall be a contractor with experience in home elevations and 1 of whom shall be an insurance agent with knowledge in flood insurance and experience in guiding and consulting for mitigation activities; the acting state hazard mitigation officer of the state hazard mitigation team; the acting hazard mitigation grants supervisor of the state hazard mitigation team; a licensed lender with knowledge in flood insurance, 203K home loan lending and traditional loans used for mitigation activities who shall be appointed by the acting state hazard mitigation officer of the state hazard mitigation team; and 3 persons to be appointed by the governor, 1 of whom shall be a representative from a statewide environmental group with experience in coastal resiliency strategies and nature based solutions, 1 of whom shall be a representative of the executive office of energy and environmental affairs with knowledge of climate change adaptation, and 1 of whom shall be a representative from the executive office of public safety and security with knowledge of the federal hazard mitigation grant program and experience with mitigation activities. The first meeting of the special commission shall take place not later than December 1, 2018.

Respectfully submitted,

CHARLES D. BAKER,
Governor.

The actions taken by the Governor are delineated on this excerpt from the original parchment:—

I disapprove Section 6.

I return for amendment, pursuant to the authority vested in me by Article 56, as amended by Article 90, Section 3, of the Amendments to the Constitution, Sections 22, 90, 92, 94, and 95. The text of my recommended amendments is set forth in separate letters of this date to the Senate and House of Representatives.

The remainder of this bill I approve.

Approved, August 9, 2018

at o'clock and minutes, .M.

Charles D. Baker
Governor