

HOUSE No. 4971

The Commonwealth of Massachusetts

PRESENTED BY:

Timothy R. Whelan and William L. Crocker, Jr.

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 establishing the DHY Clean Waters Community Partnership for the towns of Dennis, Harwich and Yarmouth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>	<i>9/28/2018</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>	<i>9/28/2018</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>10/1/2018</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>10/1/2018</i>

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By Messrs. Whelan of Brewster and Crocker of Barnstable, a petition (subject to Joint Rule 12) of Timothy R. Whelan, William L. Crocker, Jr., and others for legislation to establish the DHY clean waters community partnership, an inter-municipal agreement for waste water management in the towns of Dennis, Harwich, and Yarmouth. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act establishing the DHY Clean Waters Community Partnership for the towns of Dennis, Harwich and Yarmouth.

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. There shall be a regional wastewater district for the towns of Dennis,
2 Harwich and Yarmouth, to be known as the DHY clean waters community partnership, which
3 shall be a body politic and corporate and political subdivision of the commonwealth.
4 Notwithstanding the procedural requirements of section 25 of chapter 40N or sections 28 to 33,
5 inclusive, of chapter 21 of the General Laws all actions taken by the towns of Dennis, Harwich
6 and Yarmouth and the commission which are not inconsistent with this act are hereby validated,
7 ratified and confirmed in all respects. The purpose of the partnership shall be to: (i) manage and
8 control the common pumping stations, interceptors and force mains, wastewater treatment plant,
9 effluent recharge and reuse system and appurtenances; (ii) act as a regional wastewater district;
10 and (iii) provide for the collection, treatment, discharge, recharge and reuse of effluent for the
11 member towns.

SECTION 2. For the purposes of this act, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Agreement”, the agreement to be entered into by and among the towns of Dennis, Harwich and Yarmouth and approved at town meetings of said towns, as supplemented and amended by said towns in accordance with section 7.

“Commission”, the commission established in section 2.

“District” or “partnership”, the DHY clean waters community partnership established in section 1.

“Treasurer”, the treasurer appointed by the commission pursuant to section 2.

SECTION 3. (a) The powers, duties and liabilities of the partnership shall be vested in and exercised by a commission organized in accordance with this section and the agreement. The commission shall choose a chair and secretary from its membership. The commission shall appoint a treasurer, who shall not be a member of the commission. The treasurer shall receive and take charge of all money belonging to the partnership and shall pay any bill of the partnership which shall have been approved by the commission. The treasurer may, by vote of the commission, be compensated for services. The treasurer shall be subject to sections 35, 52 and 109A of chapter 41 of the General Laws, provided that in applying said sections to said treasurer, the word “partnership” shall be substituted for “town” and “commission” shall be substituted for “selectmen”.

(b) The number of commissioners representing each town shall be as defined in the agreement. The commission members shall be appointed by the local board having the authority of sewer commissioners.

SECTION 4. Notwithstanding the last sentence of section 25 of chapter 40N of the General Laws, the partnership shall have the following powers and duties:

(1) adopt a name and a corporate seal, and the engraved or printed facsimile of such seal appearing on a bond or note of the partnership shall have the same legal effect as such seal would have if it were impressed on the bond or note;

(2) sue and be sued, but only to the same extent and upon the same conditions that a city or town may be sued, and plead and be impleaded;

(3) purchase, take by eminent domain under chapters 79 and 80A of the General Laws or otherwise acquire land within the member towns, or an interest in land within those towns, for the purposes of the partnership to construct, reconstruct, replace, rehabilitate, repair, equip, operate and maintain wastewater treatment, pumping and collection and effluent recharge and reuse facilities for the benefit of said towns, or any other facilities necessary to carry out the purposes of the partnership; and make any necessary contracts in relation to those purposes; provided, however, that at least 1 commission member from the town in which the land is located shall vote in the affirmative; and provided, further, that land may be taken by eminent domain only if the partnership first requests, in writing, that the town take such land and the town does not take such land within 180 days after the partnership has requested;

51 (4) purchase or otherwise acquire land outside the member towns for the purposes stated
52 in clause (3), but only if the partnership first obtains approval, in writing, of the board of
53 selectmen or equivalent for each town in which the land is located;

54 (5) incur debt for the purpose of acquiring land, or an interest in land, and constructing,
55 reconstructing, replacing, rehabilitating, repairing and equipping wastewater treatment, pumping,
56 collection and effluent recharge and reuse facilities and any other capital improvements, assets or
57 facilities necessary to carry out the purposes of the partnership, including debt for the purposes
58 of designing and otherwise planning any such improvements, for a term not exceeding 30 years;
59 provided, that written notice of the amount of the debt and of the general purposes for which it
60 was authorized shall be given to the board of selectmen of member town and to each town's
61 board exercising the powers of sewer commissioners not later than 30 business days after the
62 date on which said debt was authorized by the commission, and no debt shall be incurred until
63 the expiration of 45 days from the date said debt was authorized by the commission; provided,
64 that an engraved or printed facsimile signature shall have the same validity and effect as the
65 chairman's written signature provided that said signature complies with all requirements of this
66 clause;

67 (6) borrow money at such rate or rates of interest as the partnership may determine; issue
68 bonds, notes and other obligations to evidence such indebtedness in the name and upon the full
69 faith and credit of the partnership and each issue of bonds or notes shall be a separate loan;
70 provided, that said bonds or notes shall be signed by the chairman and the treasurer of the
71 commission; provided, further that the chairman shall authorize the treasurer to cause to be
72 engraved or printed on said bonds or notes a facsimile of the chairman's signature; and provided,

further that the chairman's authorization shall be in writing, bearing the chairman's written signature, filed in the office of the treasurer, and open to public inspection;

(7) receive and disburse funds for a purpose of the partnership, and invest funds in an investment legally permitted for a city or town;

(8) incur temporary debt in anticipation of revenue to be received from the member towns or from any other source;

(9) assess member towns for any expenses of the partnership;

(10) maintain a reserve fund, and carry over the remaining balance of such fund into the ensuing fiscal year, subject to the limitations in section 5;

(11) apply to receive and expend or hold a grant or gift for the purposes of the partnership;

(12) engage and fix the compensation for legal counsel, financial advisors, engineers, accountants, consultants, agents and other advisors;

(13) submit an annual report to each of the member towns, containing a detailed financial statement and a statement showing the method by which the annual charges assessed against each town were computed;

(14) appoint, employ, prescribe the qualifications and fix the compensation of an executive director and such other employees as necessary to operate the partnership and pay the same out of funds of the partnership;

(15) make and execute contracts, project labor agreements and other instruments that are necessary or convenient to carrying out the powers of the partnership, including, but not limited to, contracts with a person, firm, corporation, municipality, commonwealth agency, governmental unit or other entity, foreign or domestic;

(16) make and execute contracts for the purchase or for the environmental remediation, construction, operation and management of the sewer, wastewater treatment plant, collection, treatment, reuse and recharge facilities of the partnership, or for services to be performed thereon, and rent parts thereof and grant concessions thereon, on such terms and conditions as the partnership may determine, in accordance with the agreement,; provided, however that any such transaction shall be exempt from the public bidding and procurement requirements applicable to bodies politic and corporate of the commonwealth imposed by general or special law, including without limitation, chapter 7, 30 and 149 of the General Laws, but subject to section 28 and 29 of said chapter 149, and regulations promulgated thereunder; provided, that the partnership has, pursuant to an affirmative vote and by stating the public convenience and necessity therefore, exempted such transaction from such requirement;

(17) enact by-laws and rules concerning the management and regulation of its affairs and the use of its facilities and the provision of its services;

(18) convey, sell, lease or otherwise dispose of any partnership real or personal property, or interests in such property, no longer needed for purposes of the partnership;

(19) own, acquire, manage, operate, convey or lease any capital improvements, assets or facilities as contemplated by this act and the agreement;

113 (20) invest and reinvest its funds in such investments as may be lawful for fiduciaries in
114 the commonwealth, and take and hold property as security for the payment of funds so invested,
115 as provided in section 55 of chapter 44 of the General Laws;

116 (21) procure insurance against any loss in connection with its property, capital
117 improvements, assets or facilities in such amounts and from such insurers, including the federal
118 government and directors and officers liability insurance, as it seems necessary and desirable,
119 and to pay any premiums therefor;

120 (22) assume responsibility for maintaining, monitoring and conducting other activities
121 imposed by any condition of any license, permit or approval or by any institutional control
122 arising under any environmental law or regulation with respect to the capital improvements
123 undertaken by the partnership in accordance with this act and the agreement; and

124 (23) any and all other actions necessary and convenient to carry out the powers and
125 purposes of the partnership, and all other actions incidental and related to the powers of the
126 partnership.

127 SECTION 5. The commission shall annually determine the amounts necessary to be
128 raised to maintain and operate the partnership during the ensuing fiscal year, plus a reserve fund
129 not to exceed 20 per cent of the annual budget for the ensuing year, and shall apportion the
130 amounts so determined among the several member towns based on each town's overall
131 allocation of flow capacity in accordance with the terms of the agreement. The amounts for the
132 upcoming fiscal year so apportioned for each town shall, prior to February 1 in each year, be
133 certified by the treasurer to the treasurers of the member towns and the sewer commissioners or
134 board exercising the powers of sewer commissioners of the member towns. Except to the extent

that the treasurer's certification provides a credit from sewer system revenues and other sources, the sewer commissioners or board exercising the powers of sewer commissioners of each member town shall, without further vote, include each amount so certified in the amounts to be assessed annually in such town upon sewer users and others assessable pursuant to sections 14 to 24, inclusive, of chapter 83 of the General Laws and section 23 of chapter 59 of the General Laws, and with or without a town appropriation, the town treasurer shall pay to the partnership the amounts so apportioned at the times specified in the agreement. The amounts apportioned or to be apportioned under the agreement shall not be included in calculating total taxes assessed in paragraph (b) of section 21C of said chapter 59, or the maximum levy limit in paragraph (f) of said section 21C of said chapter 59. The amounts certified by the treasurer shall be deemed to be for services customarily provided locally or subscribed to at local option and shall not be subject to the limitation of section 20B of said chapter 59.

SECTION 6. Notwithstanding chapter 44 of the General Laws, only sections 16 to 28, inclusive, of said chapter 44, shall apply to the partnership; provided, however, that the provisions of section 16 of said chapter 44 relating to the countersigning of bonds and notes and the provisions of section 24 of said chapter 44 relating to the countersigning and approval of notes and the certificates of the clerk relating to notes shall not apply to the partnership; and provided, further, that notwithstanding section 19 of said chapter 44 to the contrary, the maturities of each issue of bonds and notes of the partnership shall be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable, in the opinion of the treasurer, or in the alternative, in accordance with a schedule providing for a more rapid amortization of principal. Any debt incurred by the partnership shall not be subject to the limit of indebtedness prescribed in section 10 of said

chapter 44. Nothing in this act shall prevent a member town from establishing and maintaining a sewer enterprise fund pursuant to section 53F¹/₂ of said chapter 44 as the mechanism for assessing, collecting and paying the amounts certified by the treasurer pursuant to sections 5 and 8.

SECTION 7. The member towns shall adopt an agreement consistent with this act prior to organization of the commission under section 2 and may from time to time amend the agreement provided, that the amended agreement is consistent with this act.

SECTION 8. If a member town, which has received a certification of the partnership's charges, shall fail to pay the same to the partnership when due after demand by the partnership, the partnership may, not less than 60 days after such demand and without any requirement of election of remedy; provided, that there is no duplication of recovery: (i) certify to the state treasurer the amount owing to the partnership by the member town, whereupon the state treasurer shall promptly pay over to the partnership any amount otherwise certified to the state treasurer for payment to the member town as unrestricted general government aid and any other amount for local reimbursement, grant or assistance programs entitled to be received by the member town until such time as any deficiency in the member town's payment of charges to the partnership shall be set off by such payments from the state treasurer; and (ii) recover from the member town in an action in superior court the amount of such unpaid charges together with such lost interest and other actual damages the partnership shall have sustained from the failure or refusal of the member town to pay over said amount. Any amount paid to the partnership by the state treasurer as a set off under this section which is later determined, upon audit, to be in excess of the actual amount of charges, interest and damages due to the partnership, shall, upon demand of the member town, be repaid by the partnership to the member town.

181 SECTION 9. The partnership shall adopt such by-laws as may be necessary and proper
182 for the effective functioning of the partnership and its operations, capital improvements and
183 finances, including, but not limited to, by-law provisions as put forth in the agreement. The by-
184 laws may also provide for appointment of alternate members of the commission and such other
185 matters relative to the business and affairs of the partnership as may be appropriate to exercise all
186 powers necessary, convenient or incidental to the purposes for which the partnership was
187 formed.

188 SECTION 10. The partnership may prescribe rules and regulations regarding the use of
189 common sewers to prevent the entrance or discharge in the sewers of any substance which may
190 tend to interfere with the flow of wastewater or the proper operation of the wastewater system
191 and the treatment and disposal works, for the connection of estates and buildings with sewers, for
192 the construction, alteration and use of all connections entering into such sewers, and for the
193 inspection of all materials used in the sewers; and may prescribe civil penalties, not exceeding
194 \$5,000 per violation for each day of violation of any such rule or regulation. The rules and
195 regulations shall be published once in a newspaper of general circulation within each of the
196 member towns, and shall include a notice that the rules and regulations shall be available for
197 inspection by the public, and shall not take effect until such publication has been made. The rules
198 and regulations shall conform with state and federal law.

199 SECTION 11. Notwithstanding this act or any general or special law to the contrary, the
200 towns of Dennis, Harwich and Yarmouth, acting individually through the local board having the
201 authority of sewer commissioners in the town and not acting in concert through the partnership,
202 in order to fairly recover the costs of expanding the regional wastewater treatment works as
203 described in this act, may assess charges, assessments, betterments or privilege fees for new

204 connections to the town's local sewer system or for expanded uses of the sewer system by
205 existing users in accordance with chapters 80 or 83 of the General Laws. The sewer connection
206 charges, assessments, betterments or privilege fees may include such respective town's
207 proportionate share of the costs to the town under this act for the construction, expansion or
208 upgrade of the regional wastewater facilities and may also include the proportionate share of
209 such respective town's costs for any local wastewater facilities, including, but not limited to,
210 pumping stations, equipment and intercepting sewers. Nothing in this act shall prevent the local
211 board having the authority of sewer commissioners in the member towns from raising local
212 revenue from or continuing to engage in the constructing, operating, maintaining, expanding and
213 funding of each respective town's local municipal wastewater facilities located entirely in each
214 town separate from and independent of the regional facilities and the partnership.

215 SECTION 12. This act shall take effect upon simple majority approval of the agreement
216 at an annual or special town meeting by each member town.