

HOUSE No. 3948

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 1, 2019.

The committee on Environment, Natural Resources and Agriculture to whom was referred the petition (accompanied by bill, House, No. 896) of Timothy R. Whelan 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, reports recommending that the accompanying bill (House, No. 3948) ought to pass.

For the committee,

SMITTY PIGNATELLI.

HOUSE No. 3948

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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.

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

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

17 “Commission”, the commission established in section 3.

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

20 “Treasurer”, the treasurer appointed by the commission pursuant to section 3.

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

31 (b) The agreement shall set forth the number of commissioners from each town and their
32 manner of appointment.

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

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

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

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

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

53 (5) incur debt for the purpose of acquiring land, or an interest in land, and constructing,
54 reconstructing, replacing, rehabilitating, repairing and equipping wastewater treatment, pumping,
55 collection and effluent recharge and reuse facilities and any other capital improvements, assets or
56 facilities necessary to carry out the purposes of the partnership, including debt for the purposes

57 of designing and otherwise planning any such improvements, for a term not exceeding 30 years;
58 provided, that written notice of the amount of the debt and of the general purposes for which it
59 was authorized shall be given to the board of selectmen of member town and to each town's
60 board exercising the powers of sewer commissioners not later than 30 business days after the
61 date on which said debt was authorized by the commission, and no debt shall be incurred until
62 the expiration of 45 days from the date said debt was authorized by the commission; provided,
63 that an engraved or printed facsimile signature shall have the same validity and effect as the
64 chairman's written signature provided that said signature complies with all requirements of this
65 clause;

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

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

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

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

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

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

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

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

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

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

95 (16) make and execute contracts for the purchase or for the environmental remediation,
96 construction, operation and management of the sewer, pumping stations, wastewater treatment
97 plant, collection, treatment, reuse and recharge facilities of the partnership, or for services to be
98 performed thereon, and rent parts thereof and grant concessions thereon, on such terms and
99 conditions as the partnership may determine, in accordance with the agreement;

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

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

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

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

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

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

117 (23) any and all other actions necessary and convenient to carry out the powers and
118 purposes of the partnership, and all other actions incidental and related to the powers of the
119 partnership.

120 SECTION 5. The commission shall annually determine the amounts necessary to be
121 raised to maintain and operate the partnership during the ensuing fiscal year, plus a reserve fund
122 not to exceed 20 per cent of the annual budget for the ensuing year and shall apportion the
123 amounts so determined among the several member towns based on each town's overall
124 allocation of flow capacity in accordance with the terms of the agreement. The annual budget
125 proposed by the commission shall be subject to the approval process by the member towns as set
126 forth in the agreement. The amounts for the upcoming fiscal year so apportioned for each town
127 shall, prior to February 1 in each year, be certified by the treasurer to the treasurers of the
128 member towns and the sewer commissioners or board exercising the powers of sewer
129 commissioners of the member towns. Except to the extent that the treasurer's certification
130 provides a credit from sewer system revenues and other sources, the sewer commissioners or
131 board exercising the powers of sewer commissioners of each member town shall, without further
132 vote, include each amount so certified in the amounts to be assessed annually in such town upon
133 sewer users and others assessable pursuant to sections 14 to 24, inclusive, of chapter 83 of the
134 General Laws and section 23 of chapter 59 of the General Laws, and with or without a town
135 appropriation, the town treasurer shall pay to the partnership the amounts so apportioned at the
136 times specified in the agreement. The amounts apportioned or to be apportioned under the
137 agreement shall not be included in calculating total taxes assessed in paragraph (b) of section
138 21C of said chapter 59, or the maximum levy limit in paragraph (f) of said section 21C of said
139 chapter 59. The amounts certified by the treasurer shall be deemed to be for services customarily
140 provided locally or subscribed to at local option and shall not be subject to the limitation of
141 section 20B of said chapter 59.

142 SECTION 6. Notwithstanding chapter 44 of the General Laws, only sections 16 to 28,
143 inclusive, of said chapter 44, shall apply to the partnership; provided, however, that the
144 provisions of section 16 of said chapter 44 relating to the countersigning of bonds and notes and
145 the provisions of section 24 of said chapter 44 relating to the countersigning and approval of
146 notes and the certificates of the clerk relating to notes shall not apply to the partnership; and
147 provided, further, that notwithstanding section 19 of said chapter 44 to the contrary, the
148 maturities of each issue of bonds and notes of the partnership shall be arranged so that for each
149 issue the amounts payable in the several years for principal and interest combined shall be as
150 nearly equal as practicable, in the opinion of the treasurer, or in the alternative, in accordance
151 with a schedule providing for a more rapid amortization of principal. Any debt incurred by the
152 partnership shall not be subject to the limit of indebtedness prescribed in section 10 of said
153 chapter 44. Nothing in this act shall prevent a member town from establishing and maintaining a
154 sewer enterprise fund pursuant to section 53F½ of said chapter 44 as the mechanism for
155 assessing, collecting and paying the amounts certified by the treasurer pursuant to sections 5 and
156 8.

157 SECTION 7. The agreement shall be consistent with this act and the member towns may
158 from time to time amend the agreement provided, that the amended agreement is consistent with
159 this act.

160 SECTION 8. If a member town, which has received a certification of the partnership's
161 charges, shall fail to pay the same to the partnership when due after demand by the partnership,
162 the partnership may, not less than 60 days after such demand and without any requirement of
163 election of remedy; provided, that there is no duplication of recovery: (i) certify to the state
164 treasurer the amount owing to the partnership by the member town, whereupon the state treasurer

165 shall promptly pay over to the partnership any amount otherwise certified to the state treasurer
166 for payment to the member town as unrestricted general government aid and any other amount
167 for local reimbursement, grant or assistance programs entitled to be received by the member
168 town until such time as any deficiency in the member town's payment of charges to the
169 partnership shall be set off by such payments from the state treasurer; and (ii) recover from the
170 member town in an action in superior court the amount of such unpaid charges together with
171 such lost interest and other actual damages the partnership shall have sustained from the failure
172 or refusal of the member town to pay over said amount. Any amount paid to the partnership by
173 the state treasurer as a set off under this section which is later determined, upon audit, to be in
174 excess of the actual amount of charges, interest and damages due to the partnership, shall, upon
175 demand of the member town, be repaid by the partnership to the member town.

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

183 SECTION 10. The partnership may prescribe rules and regulations regarding the use of
184 common sewers to prevent the entrance or discharge in the sewers of any substance which may
185 tend to interfere with the flow of wastewater or the proper operation of the wastewater system
186 and the treatment and disposal works, for the connection of estates and buildings with sewers, for
187 the construction, alteration and use of all connections entering into such sewers, and for the

188 inspection of all materials used in the sewers; and may prescribe civil penalties, not exceeding
189 \$5,000 per violation for each day of violation of any such rule or regulation. The rules and
190 regulations shall be published once in a newspaper of general circulation within each of the
191 member towns, and shall include a notice that the rules and regulations shall be available for
192 inspection by the public, and shall not take effect until such publication has been made. The rules
193 and regulations shall conform with state and federal law.

194 SECTION 11. Notwithstanding this act or any general or special law to the contrary, the
195 towns of Dennis, Harwich and Yarmouth, acting individually through the local board having the
196 authority of sewer commissioners in the town and not acting in concert through the partnership,
197 in order to fairly recover the costs of expanding the regional wastewater treatment works as
198 described in this act, may assess charges, assessments, betterments or privilege fees for new
199 connections to the town's local sewer system or for expanded uses of the sewer system by
200 existing users in accordance with chapters 80 or 83 of the General Laws. The sewer connection
201 charges, assessments, betterments or privilege fees may include such respective town's
202 proportionate share of the costs to the town under this act for the construction, expansion or
203 upgrade of the regional wastewater facilities and may also include the proportionate share of
204 such respective town's costs for any local wastewater facilities, including, but not limited to,
205 pumping stations, equipment and intercepting sewers. Nothing in this act shall prevent the local
206 board having the authority of sewer commissioners in the member towns from raising local
207 revenue from or continuing to engage in the constructing, operating, maintaining, expanding and
208 funding of each respective town's local municipal wastewater facilities located entirely in each
209 town separate from and independent of the regional facilities and the partnership.

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