

HOUSE No. 880

The Commonwealth of Massachusetts

PRESENTED BY:

Edward R. Philips

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 to improve the review and regulation of emerging contaminants on public water systems.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Edward R. Philips</i>	<i>8th Norfolk</i>	<i>1/17/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/1/2023</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/6/2023</i>
<i>Simon Cataldo</i>	<i>14th Middlesex</i>	<i>2/24/2023</i>
<i>Jacob R. Oliveira</i>	<i>Hampden, Hampshire and Worcester</i>	<i>3/14/2023</i>
<i>Nick Collins</i>	<i>First Suffolk</i>	<i>5/31/2023</i>

HOUSE No. 880

By Representative Philips of Sharon, a petition (accompanied by bill, House, No. 880) of Edward R. Philips and others relative to emerging contaminants on public water systems. Environment and Natural Resources.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 934 OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act to improve the review and regulation of emerging contaminants on public water systems.

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 160 of Chapter 111 of the Massachusetts General Laws shall be amended to
2 include the following:

3 SECTION 1. For purposes of this act, Maximum Contaminant Level or MCL means the
4 maximum permissible level of a contaminant in water which is delivered to any user of a public
5 water system. Maximum Contaminant Level Goal or MCLG means the level of a contaminant in
6 drinking water at or below which there is no known or expected risk to health. MCLGs allow for
7 a margin of safety.

8 SECTION 2. To address the potential for adverse human health impacts from the
9 presence of potentially toxic substances in the public water supplies of the Commonwealth, and

to establish science-based processes and procedures for assessing the risks presented by such substances and a cost-benefit analysis to determine the practicality and efficacy of operational and remedial actions with respect to the substances, there shall be a Science Advisory Board to facilitate timely and accurate toxicological assessments of contaminants of concern, receipt of comments from PWS, public health, municipal, and industry interests regarding the burdens of implementing any new Health Advisory Maximum Contaminant Level Goal (MCLG), or MCL, and reporting formal findings to the MassDEP in connection with any regulatory effort to identify and evaluate whether certain contaminants of concern have such an adverse impact on human health that they should be regulated as contaminants.

SECTION 3. Members of the Science Advisory Board will be appointed by the Governor for a term of 5 years. The Science Advisory Board shall consist of 13 members; 6 positions will be permanent organization members and 7 positions will be at-large members. Each of the following 6 permanent organization members shall name a representative to serve a 5-year term: 1 of whom shall be a representative of the MassDEP Office of Research and Standards (who shall co-chair the Board); 1 of whom shall be a representative of the MA Department of Public Health (who shall co-chair the Board); 1 of whom shall be a representative of the MassDEP Drinking Water Program; 1 of whom shall be a representative of the Mass Water Works Association; 1 of whom shall be a representative of the Massachusetts Municipal Association; and 1 of whom shall be a representative of the Massachusetts Association of Health Boards. The Governor shall appoint representatives for the 7 at-large seats on the Science Advisory Board after receiving nominations from interested individuals or groups representing the following: 1 of whom shall be an epidemiologist affiliated with an accredited academic institutions or local hospital; 1 of whom shall be a a toxicologist credentialed by the American

Board of Toxicology; 1 of whom shall be a representative of a community health organization; 1 of whom shall be a representative of a national environmental health organization or its local affiliate; 1 of whom shall be a representative from Massachusetts Chemistry & Technology Alliance, Inc.; 1 of whom shall be a representative from a consumer advocate group; and 1 of whom shall be a representative of an environmental advocacy group.

SECTION 4. The meetings of the Science Advisory Board shall be convened in accordance with 940 CMR 29.00.

SECTION 5. To regulate a substance as a contaminant under 310 CMR 22.00, MassDEP and the Science Advisory Board must both make a proposed finding that the substance: (a) may have an adverse human health effect; (b) that the contaminant is known to occur, or there is substantial likelihood it will occur, in PWSs with a frequency and at levels of public health concern; (c) and that there is an opportunity to reduce significant health risks to people served by a PWS. The Science Advisory Board's findings must be "based on the best available public health information."

SECTION 6. As part of its formal proposed finding, the Science Advisory Board shall only consider scientific studies that have been peer-reviewed and published. The Science Advisory Board's finding must include a detailed analysis of the studies that were reviewed during the Science Advisory Board's deliberation. This summary must articulate the reasons the Science Advisory Board included or excluded any study presented to them.

SECTION 7. The Science Advisory Board's proposed finding shall include: (i) a recommendation for a MCLG, to establish the level of a contaminant in drinking water below which there is no known or expected risk to health; (ii) recommendation for a MCL for the

contaminant; and (iii) a determination whether the proposed finding will achieve the objectives of protecting human health, including sensitive sub-populations, in a more cost-effective manner, or with greater net benefits, than other regulatory alternatives.

SECTION 8. The Science Advisory Board's proposed finding shall be published on its website and in the Environmental Monitor. The public shall have at least 45 days after publication to review and comment on the proposed finding.

SECTION 9. Within 60 days of the close of the comment period, the Science Advisory Board shall: (a) publish a withdrawal of its proposed finding; (b) publish a response to comments and a revised proposed finding; or (c) publish a response to comments and a final determination in accordance with M.G.L. c. 30A.

SECTION 10. After publishing a final determination with any proceedings under M.G.L. c. 30A having been resolved to finality, the Science Advisory Board shall submit its final determination to MassDEP with its formal recommendation regarding the identification of a proposed contaminant of concern.

SECTION 11. MassDEP shall conduct its own independent assessment of the proposed contaminant and shall (a) present its preliminary determination to the Safe Drinking Water Act Advisory Committee, and (b) present its preliminary determination to a Small Business Advocacy Review Panel.

SECTION 12. A Small Business Advocacy Review (SBAR) panel shall be appointed by the Governor for review of any proposed Drinking Water Standard. The Small Business Advocacy Review Panel shall be made up of 11 members: 2 of whom shall be representatives of the Associated Industries of Massachusetts, 2 of whom shall be economists affiliated with

accredited academic institutions, 3 of whom shall be representatives from the Massachusetts Municipal Association (1 of whom shall represent a small community, 1 of whom shall represent a medium sized community, and 1 of whom shall represent a large city), 1 of whom shall be a representative of the Massachusetts Office of Business Development, 1 of whom shall be a representative of the Executive Office of Administration and Finance; 1 of whom shall be a representative of the Massachusetts Treasurers Office, and 1 of whom shall be a representative of the Massachusetts Water Works Association.

SECTION 13. The SBAR shall make an independent determination whether the proposed Drinking Water Standard will achieve the objectives of protecting human health, including sensitive sub-populations, in a more cost-effective manner, or with greater net benefits, than other regulatory alternatives.

SECTION 14. Following any review and comment by the Safe Drinking Water Act Advisory Committee and the SBAR, MassDEP shall publish the preliminary Determination on its website for review and comment by the public for a minimum of 60 days.

SECTION 15. Within 60 days of the close of the comment period, the MassDEP shall: (a) publish a withdrawal of its preliminary Determination; (b) publish a response to comments and a revised preliminary Determination; or (c) publish a response to comments and a final Determination in accordance with M.G.L. c. 30A.

SECTION 16. If MassDEP makes a formal Determination to regulate a contaminant, MassDEP must (a) publish a MCLG, to establish the level of a contaminant in drinking water below which there is no known or expected risk to health; and (b) establish a primary drinking water regulation (usually a MCL) within 2 years of deciding to regulate.

SECTION 17. The MCLG shall be determined by the Science Advisory Board and MassDEP at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an “adequate margin of safety.” When determining an MCLG, the Science Advisory Board and MassDEP will consider the adverse health risk to sensitive subpopulations, including, but not limited to: (i) infants; (ii) children; (iii) the elderly; and (iv) those with compromised immune systems and chronic diseases.

SECTION 18. If it is determined that there is a sensitive subpopulation that is adversely impacted by the contaminant in a particular manner that is distinct from impacts to the general population, that subpopulation shall be identified specifically and a separate MCLG shall be set for this population in addition to a MCLG for the general population.

SECTION 19. The MCL(s) shall be set “as close as to the maximum contaminant level goal(s) as feasible” or a Treatment Technique could be established if MCL criteria is not met.

SECTION 20. In establishing a MCLG or a MCL, MassDEP must seek public comment and an analysis of the following: (i) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur as the result of treatment to comply with each MCLG or MCL; (ii) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur from reductions in co-occurring contaminants that may be attributed solely to compliance with the maximum contaminant level, excluding benefits resulting from compliance with other proposed or promulgated regulations; (iii) Quantifiable and nonquantifiable costs for which there is a factual basis in the rulemaking record to conclude that such costs are likely to occur solely as a result of

121 compliance with the MCL, including monitoring, treatment, and other costs and excluding costs
122 resulting from compliance with other proposed or promulgated regulations; (iv) The incremental
123 costs and benefits associated with each alternative MCL considered; (v) The effects of the
124 contaminant on the general population and on specifically identified groups within the general
125 population such as infants, children, pregnant women, the elderly, individuals with a history of
126 serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse
127 health effects due to exposure to contaminants in drinking water than the general population; (vi)
128 Any increased health risk that may occur as the result of compliance, including risks associated
129 with co-occurring contaminants; (vii) Other relevant factors, including the quality and extent of
130 the information, the uncertainties in the analysis supporting subclauses (i) through (vi), and
131 factors with respect to the degree and nature of the risk.

132 SECTION 21. If MassDEP establishes a MCLG or MCL level that is different from the
133 recommendation in the Science Advisory Board's final determination, MassDEP shall provide
134 written documentation for public comment as to their reasoning.

135 SECTION 22. MassDEP shall prepare a health risk reduction and cost analysis
136 (HRRCA) in support of any Massachusetts Drinking Water Standard.

137 SECTION 23. MassDEP must review its Drinking Water Standards every six years and
138 revise if appropriate.