

SENATE No. 559

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

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 a Massachusetts Flood Risk Protection Program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Marc R. Pacheco</i>	<i>Third Bristol and Plymouth</i>	
<i>Nick Collins</i>	<i>First Suffolk</i>	<i>3/2/2023</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>3/27/2023</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>3/27/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>8/9/2023</i>

SENATE No. 559

By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 559) of Marc R. Pacheco and Nick Collins for legislation to establish a Massachusetts Flood Risk Protection Program. Environment and Natural Resources.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 603 OF 2021-2022.]

The Commonwealth of Massachusetts

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

An Act establishing a Massachusetts Flood Risk Protection Program.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to address climate change impacts from sea level rise, floods, and storms through voluntary property buyouts and wetland restoration, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and health.

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. Flood Risk Protection Program

2 Notwithstanding any special or general law to the contrary, the secretaries of the
3 executive office of energy and environmental affairs, executive office of housing and economic
4 development, and executive office of public safety and security shall develop and administer a
5 statewide flood risk protection program. The program shall acquire properties which are, or are
6 projected to be, repetitively or substantially damaged by floods. Funds deposited in the flood risk
7 protection trust fund shall cover the acquisition of property from willing owners; structure

8 demolition; relocation of impacted property owners, tenants and lessees; coastal, floodplain and
9 wetland restoration; and creation of open space for conservation and recreational purposes to be
10 protected in perpetuity.

11 Section 2. Definitions

12 As used in this chapter the following words shall have the following meanings:

13 “Contiguous properties”, two or more adjoining parcels.

14 “Cluster properties”, two or more properties that, although non-contiguous, are within
15 proximity.

16 “Eligible entity”, an entity with expertise in land conservation and restoration, including a
17 state agency, nonprofit land trust, nonprofit conservation organization, local governmental body
18 or community development corporation. For the purposes of this chapter, a local governmental
19 body includes a town, city, county, district, commission, board and regional governmental unit.

20 "Environmental justice population", as defined in Section 62 of chapter 30 of the general
21 laws.

22 “Flood risk”, property at risk of being inundated by water or mudflow and that currently
23 suffers or is projected to suffer repetitive or substantial flood damage as determined by the best
24 available climate, flooding, erosion, and sea level rise data and modeling.

25 “Nature-based solutions”, as defined in section 1 of chapter 21N of the general laws.

26 Section 3. Program Eligibility

27 The following shall be eligible under this program:

28 (a) Property that is a flood risk and used for residential, nonprofit, or small business
29 purposes, as defined by section 1 of chapter 40W of the general laws, including the buildings and
30 structures thereon.

31 (b) Projects that receive, or do not receive, funding from the federal emergency
32 management agency.

33 Section 4. Program Requirements

34 The following shall be requirements under this chapter:

35 (a) This program is voluntary and so property shall only be acquired from a willing seller
36 or sellers.

37 (b) Property shall be acquired at fair market value of land, buildings and structures.
38 Damaged property shall be valued at pre-loss fair market value. The process for calculating fair
39 market value and pre-loss fair market value shall be defined through regulation.

40 (c) No less than 75 percent of program funds shall be reserved for eligible property
41 owners that are (i) low-income, defined as a household income 65 percent of the state median
42 income or less, or (ii) located within an environmental justice population.

43 (d) Acquired properties shall be conserved in perpetuity and maintained as open space for
44 conservation and recreation purposes by an eligible entity or entities. Public access shall be
45 required unless access is prohibited under state or local law.

46 (e) New and permanent engineered structures and other improvements shall not be
47 erected on any property acquired under this chapter unless such structures or improvements are
48 critical to complete a nature-based solutions project, are open on all sides (restrooms excepted),

49 can be easily moved, and are functionally related to open space use. These restrictions, along
50 with the right to enforce the same, are deemed to be covenants running with the land in
51 perpetuity and are binding on subsequent successors, grantees, or assigns.

52 (f) Any conveyance is subject to rights outstanding in third parties for existing easements.

53 Section 5. Statewide Flood Risk Assessment and Standards

54 The secretary of the executive office of energy and environmental affairs shall use the
55 best available climate data and models, and sea level rise, tidal, coastal, riverine flooding data,
56 and models, to assess the current and future flood risk to property statewide. To assess current
57 and future flood risk, the secretary shall solicit input from the executive office of housing and
58 economic development and the executive office of public safety and security; and shall consult
59 with federal agency experts and scientific, technical and insurance experts.

60 Following the development of each statewide assessment, the secretary shall create and
61 update standards used to evaluate properties that may be acquired from a willing seller or sellers
62 under this chapter. The standards shall be used to set priorities based on the following factors:

63 (1) Properties that are a flood risk.

64 (2) Properties owned by low-income property owners and properties within an
65 environmental justice population.

66 (3) Clustered properties or contiguous properties.

67 (4) Projects that will further protect the public health and safety of first responders,
68 neighbors and local communities.

69 (5) Projects that protect, restore, and enhance wildlife habitat, fisheries, agricultural
70 lands, drinking water supplies, ecosystem services, and that offer conservation and recreation
71 opportunities for public use.

72 The statewide standards shall be noticed for public comment no later than 180 days after
73 enactment.

74 A statewide flood risk assessment shall be updated every five years and include a
75 statewide evaluation of the program's impact on flood risk and benefits to the public. The
76 secretary shall provide a detailed report on each updated assessment to the joint committee on
77 environment, natural resources and agriculture every five years, and shall make every updated
78 assessment available for public view.

79 Section 6. Roles and Responsibilities

80 (1) The secretaries of the executive office of energy and environmental affairs, executive
81 office of housing and economic development, and executive office of public safety and security
82 shall divide the following roles and responsibilities depending on agency expertise:

83 (a) Develop an outreach, education and awareness program for local governmental bodies
84 and owners, tenants and lessees of properties that are a flood risk.

85 (b) Provide technical assistance to property owners interested in selling their property.

86 (c) Establish procedures to support property owners, tenants, and lessees in need of
87 relocation assistance.

88 (d) Facilitate relationships between a property owner and eligible entities when possible.

89 (e) Develop a pre-approval acquisition program that includes partnerships with eligible
90 entities to promote efficient and timely property transfers, minimize hardships on property
91 owners, and discourage repetitive rehabilitation, repairing and rebuilding of flood risk
92 properties.

93 (2) The executive office of energy and environmental affairs and its agencies may acquire
94 and conserve flood risk property on behalf of the commonwealth, when in the commonwealth's
95 interest, and when there is no other eligible entity available to acquire an owner's property.

96 Section 7. Flood Risk Protection Program Trust Fund

97 (1) The secretary of energy and environmental affairs shall create and administer the
98 flood risk protection program trust fund into which shall be deposited: (a) any revenues or other
99 financing sources directed to the fund by appropriation; (b) bond revenues authorized by the
100 general court and designated to be credited to the fund; (c) any income derived from the
101 investment credited to the fund; (d) funds from public or private sources including, but not
102 limited to, gifts, federal or private grants, donations, rebates and settlements received by the
103 commonwealth that are designated to be credited to the fund; and (e) all other amounts credited
104 or transferred into the fund from any other source.

105 (2) Amounts credited to the fund may be used, without further appropriation, to provide
106 grants to an eligible entity, as defined by this chapter, costs associated with implementation of
107 the flood risk protection program including upfront costs or reimbursement for (a) the acquisition
108 of property; (b) fees for necessary appraisals, title searches, title insurance, property inspections,
109 and surveys, environmental assessments and other necessary site-specific due diligence; (c) the
110 controlled demolition, removal and disposal of buildings and structures. Buildings and structures

111 deemed historically significant will be documented and options for relocation or deconstruction
112 shall be explored before they are demolished. Archaeological resources will be documented and
113 saved under the supervision of a professional archaeologist, and if applicable, in consultation
114 with a tribal representative; (d) relocation assistance for homeowners, tenants and lessees; and
115 (e) site restoration and stabilization including nature-based solutions that enhance climate
116 resiliency and restore and conserve fish and wildlife habitat.

117 (3) The secretary shall assess all funding secured from other public and private sources
118 for a project before awarding a grant from the fund for that project, to ensure that the total
119 amount paid from the fund does not exceed the total value of the project.

120 (4) The amounts expended from the fund during any fiscal year for the costs of
121 employees shall not exceed 5 per cent of total funds expended from the fund in that fiscal year.

122 (5) Monies deposited into the flood risk protection program trust fund that are not
123 expended at the end of each fiscal year shall not revert to the general fund and shall be available
124 for expenditure in the subsequent fiscal year.

125 (6) Annually, and not later than December 1 of each year, the secretary of energy and
126 environmental affairs shall report on the activities of the fund to the clerks of the house of
127 representatives and the senate and to the house and senate committees on ways and means. The
128 report shall include an accounting of expenditures made from the fund with a description of the
129 purpose of each expenditure, an accounting of amounts credited to the fund and any unexpended
130 balance remaining in the fund.

131 Section 8. Regulations

132 The secretaries of the executive office of energy and environmental affairs, executive
133 office of housing and economic development, and executive office of public safety and security
134 shall promulgate rules, regulations and guidelines for the administration and oversight of this
135 chapter no later than 180 days after enactment.

136 Section 9. Interagency Coordination

137 The secretaries of the executive office of energy and environmental affairs, executive
138 office of housing and economic development, and executive office of safety and security shall
139 enlist, engage, collaborate, and coordinate with external experts and stakeholders regarding the
140 creation and implementation of the flood risk protection program. Such experts and stakeholders
141 shall include but are not limited to the environmental justice advisory council established by
142 section 62L of chapter 30 of the general laws, the global warming solutions act implementation
143 advisory committee, and homeowners, tenants, insurers, and municipal officials.