HOUSE DOCKET, NO. 1155 FILED ON: 1/20/2011

HOUSE . . . . . No. 1168

The Commonwealth of Massachusetts

PRESENTED BY:

Martha M. Walz

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 protect groundwater levels.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martha M. Walz	*8th Suffolk*
Carolyn C. Dykema	*8th Middlesex*
Byron Rushing	*9th Suffolk*

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HOUSE . . . . . No. 1168

By Ms. Walz of Boston, a petition (accompanied by bill, House, No. 1168) of Martha M. Walz, Carolyn C. Dykema and Byron Rushing for legislation to protect groundwater. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *852* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to protect groundwater levels.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish the Massachusetts Groundwater Protection Act, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 2 of chapter 21A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after paragraph (30) the following paragraph:-

(31) participate in a City/State Groundwater Working Group as described in a memorandum of understanding, as it may be amended from time to time, entered into as of the fifteenth day of September 2005 by the office, certain state authorities, the city of Boston, certain city of Boston agencies and commissions, and the Boston Groundwater Trust.

SECTION 2. Section 8 of chapter 21A of the General Laws is hereby amended by inserting, after the first paragraph, the following paragraph:

9 The department of environmental protection shall be vested with all the powers and
10 duties which relate to groundwater supply and groundwater protection necessary to implement
11 the provisions of chapter 21O, including the promulgation of all necessary and appropriate
12 regulations. The department of environmental protection shall, in its sole discretion, charge an
13 existing bureau with responsibility to implement the provisions of chapter 21O or create a new
14 bureau for that purpose.

15 SECTION 3. The General Laws are hereby amended by inserting after chapter 21N the
16 following chapter:

17 CHAPTER 21O MASSACHUSETTS GROUNDWATER PROTECTION ACT.

18 Short Title. This chapter shall be known and may be cited as the "Massachusetts
19 Groundwater Protection Act".

20 Purpose. The purpose of the Massachusetts Groundwater Protection Act is to protect
21 structures supported by wooden pilings from damage due to lowered groundwater.

22 Definitions. As used in this chapter, the following words shall, unless the context clearly
23 indicates otherwise, have the following meanings:

24 "Act", the Massachusetts Groundwater Protection Act.

25 "Basement", an enclosed structure underneath a building, the floor of which is, in whole
26 or in part, below the adjacent ground surface.

27 "Board", the Groundwater Protection Board established pursuant to subsection (j) of this
28 chapter.

29 "Bureau Representative", an official from the Department charged with investigating
30 potential causes of groundwater drawdown problem upon petition to the Board.

31 "City/State Groundwater Working Group", the state and other authorities, agencies, and
32 departments that are signatories to the Memorandum of Understanding dated September 15,
33 2005, and who have been active participants in the quarterly meetings held subsequently, and
34 also including subsequent signatories.

35 "Covered Community", shall have the meaning set forth in section (e)(1) of this chapter.

36 "Department", the Department of Environmental Protection.

37 "Groundwater", all water beneath the surface of the ground, whether wholly or partly
38 within the commonwealth.

39 "Impacted Area", an area within a Covered Community where buildings or other
40 structures are known or suspected to be supported by wooden pilings.

41 "Infrastructure Owner or Operator", any person who owns, operates or maintains
42 Underground Infrastructure located within the commonwealth.

43 "Local Agency", the entity within a Covered Community designated to carry out the
44 applicable provisions of this chapter, including any department, board, commission, division,
45 authority, or other entity within a city or town, or any agency or political subdivision thereof.

46 "Monitoring Well", an excavation, pipe, or underground structure designed and installed
47 for the purpose of measuring groundwater levels.

48 "Other Building Owner", any person who owns a building within the commonwealth and
49 is not classified as a "Residential Building Owner" as defined by this chapter.

50 "Owner or Operator", any Residential Building Owner, Other Building Owner, or
51 Underground Infrastructure Owner or Operator.

52 "Person", any agency or political subdivision of government, any public or private
53 corporation or authority, any natural person, individual, trust, firm, joint stock company,
54 partnership, association or other entity, and any officer, employee, or agent of such person.

55 "Residential Building Owner", any person who owns a residential dwelling. A
56 condominium association shall be considered a Residential Building Owner for the purpose of
57 this chapter.

58 "Recharge" or "Recharging", the replacement of groundwater through the use of a
59 Recharge Well or other underground structure or system designed, constructed, and installed for
60 the purpose of conveying water into the ground.

61 "Recharge Well", an excavation, perforated pipe, or porous underground structure, such
62 as a drywell or leaching pit, trench, or gallery, designed and installed for the purpose of
63 Recharging groundwater.

64 “State Agency/Agencies”, entities or instrumentalities of state government, including but
65 not limited to all departments, boards, commissions, divisions, authorities, or other such
66 organizations established by the Commonwealth.

67 "Sump Pump", a mechanism that discharges local groundwater to a sewer or other
68 conveyance.

69 "Underground Infrastructure", any subsurface installation other than a Residential
70 Building or Other Building, such as piping and conduits, tunnels, depressed roadways, railways,
71 walkways, and Basements, including those owned, operated or maintained by public entities or
72 private parties.

73 "Wooden pilings", tree trunks or other wooden supports driven into soil to provide a base
74 upon which buildings or other structures are constructed.

75 Powers and Duties of the Department.

76 Within 90 days from the effective date of this chapter, the Department shall develop and
77 implement a plan for the staffing, equipping and funding of its program under this chapter.

78 The Department shall develop and adopt regulations to effectively plan and manage
79 groundwater and for the administration of this chapter as necessary and proper to ensure an
80 adequate supply of groundwater for the purpose of sustaining and protecting existing and new
81 structures supported by wooden pilings within the commonwealth.

82 Such regulations shall be designed to protect the natural supply of groundwater and
83 maintain stable groundwater levels to protect structures that now depend on sufficient
84 groundwater levels for structural support; to assure comprehensive and systematic planning and
85 management of water withdrawals impacting groundwater levels in Impacted Areas throughout
86 the commonwealth; and to remedy damage resulting from exposure caused by lowered
87 groundwater to buildings and other structures supported by wooden pilings.

88 The Department shall establish a mechanism for monitoring groundwater levels impacted
89 by leaking Underground Infrastructure, Basements, and other sources of groundwater drawdown.

90 The Department shall promulgate final regulations within 180 days of the effective date
91 of this chapter establishing the criteria, standards and procedures to be followed in making the
92 applicability determinations consistent with the provisions of subsection (e)(1).

93 Within 180 days of the effective date of this chapter, the Department shall adopt, and
94 thereafter from time to time may amend, standards and regulations on the enforcement of the
95 provisions of this chapter.

96 The Department shall have the authority to require State Agencies and Local Agencies to:
97 provide requested information from building permits and other historical records, in consultation
98 with local transportation departments, historical research organizations, and historical
99 preservation groups; conduct field monitoring, testing and inspections in order to identify
100 reporting limits; administer and enforce the Department's regulations adopted pursuant to this
101 chapter; report instances of noncompliance; and assess and collect permit fees, and fines for
102 noncompliance and nonpayment of fees and permit fees authorized by this chapter.

103 The Department shall coordinate with and provide oversight of Local Agencies to
104 effectuate the obligations imposed upon Local Agencies under this Act, and shall monitor Local
105 Agencies' compliance with all applicable provisions, including oversight of Local Agencies and
106 their responsibilities under this chapter to regulate the use of sump pumps and the administration
107 of construction permits involving groundwater removal.

108 As may be necessary from time to time to carry out the purposes of this chapter, the
109 Department may acquire real property, or any interest therein, by purchase, gift or lease, or by
110 eminent domain under the provisions of chapter seventy-nine, and may conduct construction for
111 the purpose of Recharging local groundwater.

112 The Department shall coordinate with and oversee the establishment by Local Agencies
113 of fees that shall be imposed upon any Person who pumps or otherwise removes groundwater
114 within a Covered Community in connection with activities including, but not limited to,
115 construction, excavation, renovation, operation or other groundwater removal.

116 The Department shall promulgate regulations governing the issuance of groundwater
117 removal permits for any construction, excavation, renovation, operation or other groundwater
118 removal activities being conducted within an Impacted Area. Said regulations shall set forth the
119 criteria, standards and procedures for issuing groundwater removal permits and shall establish a
120 schedule for groundwater removal fees. Upon the effective date of the Department's regulations,
121 no groundwater shall be removed from any groundwater source within an Impacted Area a
122 groundwater removal permit obtained from the Department. Said regulations shall further
123 provide, at a minimum, that:

124 The permitting program established shall be administered by the Local Agency
125 designated by each Covered Community pursuant to subsection (e) of this chapter;

126 Any Person who pumps or otherwise removes groundwater in connection with any
127 construction, excavation, renovation, operational, or other activities within the boundaries of an
128 Impacted Area shall be subject to the permitting program; the failure of any Person who is
129 subject to the permitting program to comply with the requirement to obtain a permit shall subject
130 said Person to enforcement pursuant to subsection (e)(5); each Local Agency shall provide notice
131 to all property owners within Impacted Areas of the measures they will need to undertake to
132 comply;

133 Each permit issued pursuant to this subsection shall require as a condition to the permit
134 the Recharge of groundwater being removed to the maximum extent feasible;

135 Each permit holder shall pay a groundwater removal fee established by the applicable
136 Local Agency; in the event that groundwater is directed into a local Recharge Well, groundwater
137 removal fees shall not be assessed or collected, but said Person shall remain subject to the
138 permitting program and the requirement to obtain a permit; and

139 The uniform system of groundwater removal fees established by the Department pursuant
140 to this section shall be linearly proportional to the volumes of groundwater removed, which shall
141 be monitored and recorded using a utility meter.

142 The Department is empowered to require from time to time reports, studies, and analyses
143 by Local Authorities on whether this Act should be amended to address other means of
144 maintaining groundwater sufficiency, including, but not limited to, Recharge from sidewalks,
145 parking areas, and roof drains.

146 The Department shall establish and administer various funds as set forth herein.

147 The Department is hereby authorized to establish a Groundwater Protection Fund.

148 The Department is hereby authorized to establish a Groundwater Protection Loan Fund.

149 The Department is hereby authorized to establish a Groundwater Protection Remedial
150 Fund, which shall have a funding source separate from and independent of the Groundwater
151 Protection Fund.

152 All fees, fines, and other monies collected pursuant to this chapter shall be placed into the
153 Groundwater Protection Fund.

154 Within 180 days from the effective date of this chapter, the Department shall establish
155 rules for disbursement of the funds from the Groundwater Protection Fund, which shall include
156 provisions for the periodic disbursement in equal portions to: (i) the Department for its
157 administrative costs in carrying out the provisions of this chapter; (ii) Local Agencies within
158 Covered Communities for carrying out their administrative and enforcement responsibilities
159 pursuant to the provisions of this chapter; and (iii) the Groundwater Protection Loan Fund.

160 Within 180 days from the effective date of this chapter, the Department shall develop
161 rules for the disbursement of low-cost loans from the Groundwater Protection Loan Fund to
162 private property owners which apply for such monies to install a Recharge Well (or wells).

163 Within180 days from the effective date of this chapter, the Department shall promulgate
164 regulations for the funding and administration of the Groundwater Protection Remedial Fund.

165 Duties and Obligations of Covered Communities.

166 Applicability

167 The requirements of this section shall apply to all cities and towns that determine,
168 consistent with the provisions of this chapter, that buildings or other structures located within
169 their duly constituted boundaries are supported by wooden pilings that are structurally dependent
170 on coverage by groundwater. These cities and towns shall be designated as Covered
171 Communities.

172 All cities and towns shall make the applicability determination required under this
173 subsection and report to the Department within one year of the effective date of this chapter.
174 Such determination shall be made by majority vote of the city council or town meeting.

175 Any legal resident of said city or town shall have the right to petition the Groundwater
176 Protection Board for review of the applicability determination made by a city or town pursuant to
177 the provisions of this section if such city or town determined that buildings or other structures
178 located within its duly constituted boundaries are not supported by wooden pilings that are
179 structurally dependent on coverage by groundwater..

180 A Local Agency within each Covered Community shall be charged with the
181 responsibility of complying with the applicable requirements of this chapter.

182 The permitting program shall provide for an exception for emergency water removal,
183 including the use of sump pumps, caused by extreme weather events. A permit shall not be
184 required and fees shall not apply for fourteen days following the extreme weather event.

185 Impacted Areas

186 Each Covered Community shall identify Impacted Areas where buildings or other
187 structures are known or suspected to be supported by wooden pilings and are therefore
188 potentially subject to damage due to lowered groundwater.

189 Each Covered Community shall monitor the local levels of groundwater in Impacted
190 Areas. Monitoring may be accomplished using new or existing Monitoring Wells or other
191 techniques to monitor local levels of groundwater.

192 Each Covered Community shall publish and update at least quarter-annually a map
193 showing groundwater levels in Impacted Areas.

194 Certification Program. Each Covered Community shall keep a record of the certifications
195 to be made by property owners at the time of sale of each property sold within the boundaries of
196 an Impacted Area as required by section (f).

197 Construction Permits. Using regulations developed by the Department, each Covered
198 Community shall review applications for and grant safe-limit, limited-duration groundwater
199 removal permits for construction projects.

200 Enforcement. Each Covered Community is hereby authorized to collect fees pursuant to
201 this chapter, and is hereby authorized to adopt bylaws or ordinances providing for enforcement
202 and penalties against Residential Building Owners, Other Building Owners, and Owners and
203 Operators of Underground Infrastructure that are consistent with the Department's regulations
204 issued pursuant to this chapter.

205 Sump Pump Removal Program.

206 Twelve months from the effective date of this chapter, the following requirements shall
207 apply to all Residential Building Owners within an Impacted Area and shall be met prior to the
208 closing of a sale of any parcel of property located within the boundaries of an Impacted Area.

209 Each Residential Building Owner within an Impacted Area shall ascertain whether a
210 sump pump is present on such property. In the event that no sump pump exists, the owner shall
211 certify that fact according to the procedures set forth below. In the event that a sump pump does
212 exist, the property shall be subject to a groundwater removal fee, unless said owner has
213 permanently disconnected the sump pump from the sewer or other conveyance and re-directed
214 the flow to a Recharge Well, or taken other measures to eliminate the need for a sump pump. If
215 the sump pump has not been disconnected, said owner must install a utility meter to monitor and

216 record the volume of groundwater removed, and said owner must pay the groundwater removal
217 fee established pursuant to section (d). The owner shall certify that (i) the sump pump has been
218 permanently disconnected or (ii) said owner has installed a utility meter and made application to
219 the Local Agency subjecting the property to payment of groundwater removal fees. The owner
220 shall sign and record the certification document at the Registry of Deeds.

221 The owner shall submit a copy of the registered certification document to the Department
222 and the Local Agency.

223 This subsection shall be implemented and administered by the Local Agency designated
224 by each Covered Community pursuant to this chapter.

225 The following requirements shall apply to all Other Building Owners and to
226 Infrastructure Owners and Operators controlling property within an Impacted Area:

227 Twelve months from the effective date of this chapter, all such owners or operators must
228 ascertain whether groundwater is being removed from their property. In the event that
229 groundwater is not being removed, the owner shall certify that fact according to the procedures
230 set forth below. In the event that groundwater is being removed, the property shall achieve full
231 compliance with subsections (ii) and (iii) below within 12 months of the date of the effective
232 date of this chapter;

233 Within 12 months of the effective date of this chapter, all such owners or operators must
234 either: (1) have permanently disconnected their sump pumps or other groundwater conveyances
235 from the sewer or other pipes or conduits that transport groundwater off their property; (2) have
236 installed a utility meter (or meters) to monitor and record the volumes pumped and pay fees in
237 accordance with the fee schedule established pursuant to this chapter; or (3) have installed and

238 connected the sump pumps or other conveyances to a groundwater Recharge Well (or wells) of
239 sufficient capacity to return the anticipated volume of pumped (or otherwise removed)
240 groundwater to below the ground surface of potentially impacted property. Groundwater
241 removal fees shall not be charged for groundwater pumped or otherwise removed from the
242 property if the water is discharged into a Recharge Well (or wells) heretofore or thereafter;

243 The owner shall certify that: (i) any and all sump pumps or other groundwater
244 conveyances have been disconnected; (ii) said owner or operator has installed a utility meter (or
245 meters) and has applied to the Local Agency for a groundwater removal permit; or (iii) a
246 groundwater Recharge Well (or wells) of sufficient capacity has been installed and connected to
247 all sump pumps or other groundwater conveyances. The owner shall sign and record said
248 certification document at the Registry of Deeds.

249 This subsection shall be implemented and administered by the Local Agency designated
250 by each Covered Community pursuant to this chapter.

251 Duties of Owners and Operators of Underground Infrastructure to Inspect and Repair.

252 Each Infrastructure Owner or Operator shall inspect their Underground Infrastructure
253 within all Impacted Areas for leaks or discharge no less frequently than every five years. Said
254 Owner or Operator shall report to the Department the results of that inspection and the condition
255 of that Underground Infrastructure within 30 days of each inspection using a form to be
256 established by the Department.

257 Each Infrastructure Owner or Operator within an Impacted Area shall commence and
258 diligently pursue the necessary repairs to any existing groundwater leaks within 45 days of
259 discovery; and continuously thereafter monitor, repair, and maintain all Underground

260 Infrastructure owned or operated within an Impacted Area in accordance with this Act. The
261 Department may issue extensions to Infrastructure Owners or Operators upon a showing of good
262 cause.

263 Infrastructure Owners or Operators shall pay any fines and penalties imposed by the
264 Department wherever said Owner or Operator fails to timely comply with the inspection,
265 reporting, and repair provisions in this subsection.

266 Enforcement. The Department may issue such orders as may be reasonably necessary to
267 aid in the enforcement of the provisions of this chapter. The orders shall include, but shall not be
268 limited to, orders requiring property Owners or Operators to cease any activity which is in
269 violation of the provisions of this chapter and the standards and regulations established pursuant
270 thereto.

271 Penalties. If the Department finds that any Owner or Operator is not in compliance with
272 any order issued pursuant to this section, it shall assess a civil administrative penalty on such
273 Owner or Operator. In determining the amount of the civil penalty, the Department shall
274 consider the willfulness of the violation, its effect on the groundwater levels, the cost of
275 restoration and repair of properties damaged by the violation, the cost to adequately Recharge
276 groundwater levels, and the cost to the commonwealth of enforcing the provisions of this chapter
277 against such Owner or Operator.

278 Injunction. In addition to collecting any civil penalties recoverable pursuant to this
279 chapter, or in the event that money damages are inadequate, the Department may request the
280 attorney general to bring an action in the superior court to restrain, prevent or enjoin any conduct
281 by any Owner or Operator that is prohibited by this chapter, or to compel action to comply

282 immediately and fully with any order issued by the Department. Except in cases of emergency
283 where a court has determined that immediate abatement of the unlawful conduct is required to
284 protect the public or private interest, the court may in its discretion fix a reasonable time during
285 which the Owner or Operator responsible for the unlawful conduct shall abate and correct the
286 violation. The expense of the proceeding shall be recoverable from the violator in such manner
287 as may now or hereafter be provided by law.

288 Knowing Violation. It shall be unlawful for any Owner or Operator to knowingly: (i)
289 violate or assist in the violation of any of the provisions of this chapter or of any rules and
290 regulations adopted hereunder; (ii) fail to comply with any order issued by the Department; or
291 (iii) upon receipt of an order pursuant to this section, continue to construct or modify any
292 underground structure in Impacted Areas. Any Owner or Operator who engages in such
293 knowing unlawful conduct shall, for each separate offense, pay a fine of not less than $1,000
294 dollars, nor more than $10,000 dollars or shall be subject to a civil penalty not to exceed $25,000
295 dollars per day for each day such offense occurs or continues, in addition to any costs to remedy
296 harm caused. Each day of violation of any provision of this chapter or of any regulation adopted
297 or order issued hereunder shall constitute a separate offense.

298 Access. For the purpose of determining compliance with this chapter or any regulations
299 adopted thereunder, the duly authorized agents and employees of the Department and Local
300 Agencies may at all reasonable times, upon obtaining a court order allowing the Department
301 access or upon obtaining the voluntary consent of the Residential Building Owner, Other
302 Building Owner, and Infrastructure Owner or Operator, enter and examine any Building or
303 Underground Infrastructure potentially causing groundwater removal. The owner or operator
304 with the authority or control over the Building or Underground Infrastructure, upon presentation

305 of proper identification and purpose for inspection by the agents or employees of the Local
306 Agency or Department, shall give such agents and employees free and unrestricted entry and
307 access. Such agents and employees are authorized to conduct any inspection, monitoring or
308 sampling necessary for the administration or enforcement of this chapter. Notwithstanding the
309 foregoing, when there is an actual or threatened risk to the integrity of nearby surface or
310 subsurface structures, the Local Agency and Department is authorized to enter and examine any
311 Building or Underground Infrastructure as necessary for the administration or enforcement of
312 this chapter. In such cases, the Local Agency and Department is authorized to seek immediate
313 injunctive action from a court of competent jurisdiction to halt any activity imminently
314 jeopardizing the structural integrity of the Building or Underground Infrastructure itself, or
315 nearby surface or subsurface structures.

316 Groundwater Protection Board.

317 Within 180 days from the effective date of this chapter, the Department shall create a
318 Groundwater Protection Board within the Department to be charged with the authority to resolve
319 disputes arising from any alleged damage caused by lowered groundwater levels in Covered
320 Communities. The Department shall establish rules and procedures to assist the Board in
321 administering its authority, including procedures for conducting adjudicatory proceedings, rules
322 and procedures governing notice, pleadings, motions, discovery, intervention and participation,
323 hearings, enforcement orders, penalties, rulings, and appeals.

324 The Board shall consist of 15 members, a majority of whom must have expertise in civil
325 or geotechnical engineering, architecture, or prior experience in studies or investigations
326 concerning groundwater and wooden pilings. Five members of the Board shall be appointed by

327 the governor, five shall be appointed by the speaker of the house of representatives, and five
328 shall be appointed by the president of the senate. Each member shall serve for a term of three
329 years. Members may be reappointed for additional terms without limitation.

330 Any Person who owns property supported by wooden pilings in an Impacted Area shall
331 have the right to petition the Board for a determination of responsibility and an apportionment of
332 liability, provided that said Person produces evidence of damage due to the alleged drawdown,
333 including the level at which the allegedly damaged wooden piles were cut off when first
334 installed. In the event that a city or town, in carrying out its obligations pursuant to this chapter,
335 makes an applicability determination that is inconsistent with the criteria set forth in this Act, any
336 Person owning property within said city or town shall have the right to petition the Groundwater
337 Protection Board for review of the applicability determination.

338 Upon being petitioned, the Board shall conduct an adjudicatory proceeding pursuant to
339 the regulations promulgated by the Department under this section.

340 The Board shall determine the legal rights, duties, and privileges of the parties to the
341 adjudicatory proceeding, by considering the following factors: (i) risk to human health, the
342 environment, or public safety; (ii) risks to the structural integrity of residential, commercial, or
343 publicly owned structures; (iii) severity of the drawdown; and (iv) other factors deemed relevant
344 by the Board or the Department or the Local Agency and as set forth and explained in the
345 regulations to be developed pursuant to this section.

346 In reviewing a petition brought under this section, the Board shall:

347 Appoint a Hearing Officer and Bureau Representative to investigate and identify Owners
348 and Operators of Underground Infrastructure that may be liable for contributing to the
349 groundwater drawdown problem;

350 Direct the Hearing Officer and Bureau Representative to provide adequate public notice
351 as may be required by law and to notify all interested parties that a hearing will take place; and

352 Conduct a hearing and issue a ruling on the determination of responsibility among
353 Owners and Operators of Basements and Underground Infrastructure causing groundwater
354 removal.

355 The Board shall further have the power to:

356 Issue enforcement orders to any Owners or Operators determined to be liable under this
357 chapter to require repairs to the Basement or Underground Infrastructure and the initiation of
358 short-term and long-term remediation measures;

359 Issue civil penalties consistent with this chapter;

360 In the case of continued noncompliance with an enforcement order issued by the Board or
361 the Department, the Department is authorized to perform necessary repairs to the Underground
362 Infrastructure and seek reimbursement for the full cost of those repairs from the responsible
363 Owner or Operator;

364 Institute actions to recover all costs incurred by the Department under this section from
365 any Owner or Operator liable under this chapter;

366 Require the payment of damages to injured parties; and

367 In the case of an Owner's or Operator's knowing or intentional violation of the provisions
368 of this Act, to bring an action in the Superior Court for the county in which the alleged violation
369 occurred for the assessment of civil penalties pursuant to this chapter.

370 Except as otherwise provided in this subsection, all Owners or Operators determined by
371 the Board to be contributing to or to have contributed to the removal of groundwater in an
372 Impacted Area shall be jointly and severally liable, except as provided in subsections (j)(9) and
373 (j)(10),

374 To the Department for all costs incurred in bringing the Owner or Operator into
375 compliance with the requirements of this chapter; and

376 To any Person who owns property supported by wooden pilings for damage to said
377 Person's real property incurred or suffered as a result of such removal of groundwater in an
378 Impacted Area.

379 Any Owner or Operator determined to be liable for any costs or damages pursuant to this
380 subsection who establishes by a preponderance of the evidence that only a portion of such costs
381 or damages is attributable to leaking Basement(s) and Underground Infrastructure within that
382 Owner's or Operator's authority or control, shall be required to pay only for such portion.

383 The limitation of natural Recharge by human intervention such as paving and roofing
384 shall not be considered an attributable cause of groundwater removal, pursuant to this subsection.

385 There shall be no liability under this subsection for an Owner or Operator otherwise
386 liable who can establish by a preponderance of the evidence that the drawdown was caused by (i)
387 an act of God or (ii) an act of war.

388 Nothing in this chapter shall preclude citizens of the commonwealth or the attorney
389 general of the commonwealth from bringing a civil action in Superior Court to enforce any
390 provisions of this chapter.

391 In issuing determinations of liability within five years of the effective date of this chapter,
392 any damages determined by the Board pursuant to this section shall be awarded from the
393 Groundwater Protection Remedial Fund.

394 In recognition of the good faith endeavors of the City/State Groundwater Working Group
395 and its members, the liability provisions of this section will become effective against the
396 members of the City/State Groundwater Working Group five years after the effective date of this
397 chapter.

398 Miscellaneous.

399 All reports submitted to the Department pursuant to this chapter shall be available to and
400 accessible by the public.

401 The Department shall accept and make available and accessible to the public, in addition
402 to the required reports, any information or data submitted by Infrastructure Owners and
403 Operators, Other Building Owners, and Residential Building Owners regarding leaks or other
404 conditions on their property that may be contributing to groundwater drawdown.

405 Nothing in this chapter shall bar any rights of Other Building Owners or Residential
406 Building Owners to recover damages that are available under existing law, including the
407 common law of negligence, nuisance, and property.

408 SECTION 4. Section 6 of Chapter 62 of the General Laws, as so appearing, is hereby
409 amended by inserting after subsection (p) the following subsection:-

410 (q) Any owner of residential property located in the commonwealth who is not a
411 dependent of another taxpayer and who occupies said property as his principal residence, shall be
412 allowed a credit equal to 40 per cent of the expenditures for the repair of a private sewer lateral,
413 the installation of an groundwater recharge system, or the inspection or repair of wood pilings
414 used to support the foundation of the property that may be or have been damaged due to
415 groundwater depletion. Said expenditures shall be the actual cost to the taxpayer or $15,000,
416 whichever is less; provided, however, that said credit shall be available to eligible taxpayers
417 beginning in the tax year in which the work was completed; and provided, further, that said
418 credit shall not exceed $1,500 in any tax year and any excess credit may be applied over the
419 following five subsequent tax years up to an aggregate maximum of $6,000. The amount of any
420 such credit shall be reduced by an amount equal to the total grant or subsidy received from any
421 governmental entity, whether directly or indirectly, toward the cost of said expenditures. The
422 Department of Revenue shall promulgate such rules and regulations as are necessary to
423 administer the credit afforded by this subsection, and shall consult with the Department of
424 Environmental Protection in developing such rules, regulations, including defining eligible
425 projects and costs, for said tax credit.

426 SECTION 5. Notwithstanding any general or special law to the contrary, the secretary of
427 the executive office of energy and environmental affairs, in cooperation with other state and
428 federal agencies, shall prepare a preliminary map of tidelands and landlocked tidelands as both
429 are defined in section 1 of chapter 91 and great ponds. The department of environmental
430 protection and the department of fish and game and other applicable state agencies shall provide

431 information to the secretary in the preparation of the preliminary map. The preliminary map
432 shall depict, where feasible (1) the boundaries of properties lying within and abutting tidelands,
433 landlocked tidelands and great ponds and (2) which tidelands are private tidelands and which are
434 Commonwealth tidelands as both are defined in section 1 of chapter 91.

435 The secretary shall file a report wit the clerks of the senate and house of representatives
436 who shall forward the same to the joint committee on environment, natural resources and
437 agriculture on or before December 31, 2010. The report shall include the preliminary map of
438 tidelands, landlocked tidelands and great ponds and shall detail the necessary resources and
439 timeframe needed to produce a final certified map that shall be filed with applicable registries of
440 deeds.