HOUSE DOCKET, NO. 1645 FILED ON: 1/17/2013

HOUSE . . . . . No. 1976

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

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 passage of the accompanying:

An Act to protect children and adults from wildlife.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Anne M. Gobi	*5th Worcester*
Michael O. Moore	*Second Worcester*
John D. Keenan	*7th Essex*

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HOUSE . . . . . No. 1976

By Ms. Gobi of Spencer, a petition (accompanied by bill, House, No. 1976) of Anne M. Gobi, Michael O. Moore and John D. Keenan that the Department of Public Health and municipal boards of health issue emergency permits for the trapping of animals suspected of having rabies. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to protect children and adults from wildlife.

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. Chapter 131 of the General Laws is hereby amended by inserting after section 80A the following section:-

Section 80B. (a) In this section, the following words shall have the following meanings, unless the context requires otherwise:-

"Applicant" shall mean the applicant or the applicant's duly authorized agent.

"Commissioner", the commissioner of the department of public health.

"Department of public health" or "department", the department of public health established pursuant to section 1 of chapter 17.

"Municipal board of health", "board of health" or "board", the board of health or health department, in a city or town and its authorized officers; or, other board, district or officer having like powers of a board of health, including without limitation a health officer of a district formed by 2 or more municipalities, regional health district consisting of a regional board of health of 2 or more municipalities.

"Person" an individual, association, organization, corporation; the commonwealth, its divisions, agencies, public or quasi-public, or political subdivisions; other legal entity or respective agents.

17 (b) Notwithstanding section 80A or any other provision of this chapter, no person shall
18 use, set, place or maintain any trap device for the purpose to capture a coyote, fox or fisher cat
19 animal that poses an immediate threat to public health and safety, except as permitted under this
20 section.

21 The department of public health and municipal boards of health shall be authorized to
22 issue emergency permits to others in accordance with this section, to allow for the trapping of
23 said animals for the immediate protection of public health and safety. Such threats to public
24 health and safety from a coyote, fisher cat or fox animal may include without limitation:

25 (1) aggressive or hostile behavior exhibited by the animal toward humans;

26 (2) an animal that is known or suspected to have rabies or such other disease capable
27 of being harmful to humans;

28 (3) an animal that enters or inhabits, a building or enclosed structure; or

29 (4) an animal that exhibits an unsafe presence to humans: (i) on the grounds of a
30 school, child day care center, facility licensed by the department of early education and care,
31 community center, playground, municipal park, public or semi-public swimming beach or pool;
32 or (ii) within 500 feet of any other building or enclosed structure utilized as a dwelling or for
33 human occupancy.

34 (c) A board of health shall be authorized to issue an emergency permit to immediately
35 alleviate a threat to public health and safety posed by a coyote, fox or fisher cat. A person
36 requesting a permit shall apply in writing to the board of health of the local jurisdiction where
37 the animal control problem is located. Upon receipt of an application, the board shall make a
38 determination within 5 days whether to grant or deny the requested permit. If the board
39 determines that such threat exists, it shall immediately issue said permit, for a period not
40 exceeding 10 days. If the permit is denied, the board shall immediately send to the applicant a
41 written notice of the reason for the denial with information on the procedure to appeal the
42 adverse determination.

43 (d) If a permit is denied or no determination is rendered within the prescribed period by
44 said board under subsection (c), the applicant may appeal to the department of public health;
45 provided, a completed appeal application is filed with the department within 12 days from the
46 date the applicant applied to the board for such permit. Upon receipt of the application, the
47 department shall within 10 days, review and decide the appeal. If the department determines that
48 such threat exists, it shall immediately, issue an emergency permit to the applicant for a period
49 not exceeding 10 days; or alternatively, direct the board to issue said permit for such period,
50 which the board as directed shall immediately issue. If the appeal is denied, the department shall
51 immediately send to the applicant a written notice of the reason of the denial with information on
52 the procedure to request a hearing and reconsideration by the department.

53 Within 10 days after such denial notice issued an applicant may make a written request to
54 the department for a hearing and reconsideration. The department upon receipt of the request,
55 shall within 14 days conduct a hearing and within 5 days thereafter, issue a determination. Such
56 determination with any emergency permit shall be issued in the same manner as set forth in the
57 prior paragraph; except, no further administrative appeal shall be permitted.

58 (e) An emergency permit issued by a board or the department under this section, shall
59 authorize the applicant to utilize 1 or more trap devices, as determined by the issuing authority,
60 which shall be limited to: nets; box or cage-type traps that are designed to confine the whole
61 animal without gripping any part of the animal's body; and, other non-lethal trap devices that are
62 designed to capture and hold an animal by gripping its body or body part without intended
63 injury, such as certain cable restraints and snares. Notwithstanding, catch restraint type poles
64 shall not be regulated by this section. Each permit issued shall specify the trap device so
65 authorized. Said authority upon issuing a permit shall transmit a copy of the permit to the
66 division.

67 A threat to public health and safety posed by coyote, fisher cat or fox shall be deemed to
68 exist, if the animal exhibits or has exhibited recently, a behavior or activity identified specifically
69 in subsection (b); notwithstanding, an issuing authority in making a determination shall consider
70 the public safety including the type of device, duration and location of any such requested
71 trapping. If such threat is unabated under a prior issued permit, a person may apply to the board
72 for another permit under the procedure set forth in subsection (c); except, a board before issuing
73 another permit may require the applicant to file a trapping report for the prior permit under
74 subsection (f). Trapping under a permit issued under this section shall be performed only by a
75 person who holds a valid trapping license; and, subject to applicable regulations of the division
76 related to trapping that are not inconsistent with the provisions of this section.

77 Permit applicants shall require an applicant to specify the: (i) type and nature of the
78 animal problem, (ii) trap devices requested to alleviate the animal problem, (iii) property and
79 approximate location listing where each trap device will be placed and set, (iv) owner or tenant
80 of the land where the trap devices will be placed and set; and (v) name and license number of the
81 person who will perform the trapping. All applications shall be signed by the applicant under
82 oath. Each application shall have attached a written authorization signed by the owner or tenant
83 of land allowing the named license trapper to place and set specified traps on such land for
84 particular dates; notwithstanding, no such authorization shall be required to be submitted by a
85 municipal animal control officer for trapping on municipal owned or leased property. The
86 provisions of section 37, shall not apply to a permit issued under this section.

87 In the event a board issues a permit but denies in part, the application for the requested
88 trapping, the applicant may appeal such denial under the procedure set forth in subsection (d).
89 The filing of an appeal shall not invalidate an issued permit by the board. If the department
90 renders a favorable determination for the applicant on any part of the appeal, it shall immediately

91 issue an amended permit for a period not exceeding 10 days; or alternatively, direct the board to
92 issue said permit for such period, which a board as directed shall immediately issue. If the appeal
93 in any part is denied, the department shall immediately send written notice to the applicant with
94 the reason for the adverse determination with information on the procedure to request a hearing.

95 Within 5 days after such denial an applicant may request in writing a hearing and
96 reconsideration by the department. Upon receipt of such request, the department shall within 10
97 days conduct a hearing and thereafter, issue a determination in the same manner and procedure
98 as set forth in the previous paragraph; except no further administrative appeal shall be permitted.

99 A permit issued under this section shall be conditional and may, without prior hearing be
100 revoked, suspended, reduced in duration of time, or modified in the trapping method or
101 technique permitted subject to the provisions of this section, whenever in the opinion of the
102 department or board issuing the permit, such action is necessary for the public safety, or when
103 such threat has been abated; provided, proper notice is given to the applicant. A person issued a
104 permit, if aggrieved, within 10 days of such action may, make a written request for a hearing by
105 the authority so acting; or alternatively, if the authority acting is a board, appeal such action
106 directly to the department. The board or department, as the case may be, shall without undue
107 delay conduct a hearing, if so requested and render a determination. The authority making the
108 determination shall be authorized to reinstate or reissue the permit subject to the provisions of
109 this section. Said authority upon rendering a determination, shall immediately provide the
110 applicant with written notification of the decision together with any reinstated or reissued permit.

111 Notwithstanding any other provision to the contrary, an environmental police officer in
112 the performance of his official duties shall have the authority to utilize any trapping method or
113 device, to abate a threat to human health and safety posed by coyote, fisher cat or fox; and,
114 unless required by the director, shall not be subject to the permitting or reporting provisions
115 under this section; provided, the board having jurisdiction where the traps will be located is
116 given prior notice of such trapping.

117 (f) An applicant issued a permit under this section, shall no later than 10 days after the
118 expiration of such permit, unless an earlier period is established by other law or regulation, make
119 a written trapping report to the authority issuing such permit. Such report shall be in a form and
120 contain the information as prescribed by the department to include, the type of permit issued;
121 permit dates; authority issuing the permit; animal problem; property location for which the
122 permit issued; alleviation techniques or methods utilized at each location; species and number of
123 animals, if any, captured or taken at each location and any other information as may be required
124 by the department. Notwithstanding, an authority issuing a permit under this section, may impose
125 reasonable reporting requirements of a different time or interval, which shall be conspicuously
126 stated on the issued permit; provided, such date is no later than 10 days after the expiration of the
127 permit or other applicable date as required under other law or applicable regulation.

128 The commissioner shall by regulation establish procedures for trapping report
129 information to be transmitted by a board to the department. The commissioner and the director,
130 in consultation with each other, shall periodically review and analyze such reported data together
131 with any additional information relating to permits that were requested or issued, to identify
132 animal control problems in geographical areas that pose a recurrent threat to public health and
133 safety.

134 (g) The commissioner in consultation with the director shall by regulation establish a
135 uniform permitting process requiring the use of standardized forms for applications, appeals,
136 notices, permits, reports and other regulations for the administration of this section. Such
137 uniform forms to be used by permit applicants shall be displayed on the department's public
138 internet website in a user printable format.

139 (h) The department shall have the supplemental authority to issue a permit when in the
140 determination of the commissioner, such action to protect public health and safety is necessary or
141 required to accomplish the purpose of this section.

142 (i) Any person who is aggrieved by a determination by a board or division under this
143 section, if having proper standing, where no further administrative appeal under this section is
144 available, may obtain judicial review under section 14 of chapter 30A; notwithstanding, the lack
145 of any formal record of the prior administrative proceedings shall not bar such relief. Cases heard
146 by a court shall be de novo and a court shall issue appropriate orders to protect public health and
147 safety as it deems proper.

148 (j) This section shall not prohibit the trapping of coyotes, fisher cat or fox, during an open
149 season declared by the director, for wildlife management by the division, by special permit
150 issued by the director under section 80A, or as allowed under other law or regulation of the
151 division; provided, such trapping shall not be for the purpose to abate an immediate threat to
152 public health and safety posed by such animals.

153 (k) Whoever violates any provisions of this section, or any rule or regulation made under
154 the authority thereof, shall be punished as provided under the last paragraph of section 80A. An
155 environmental police officer shall have the authority to enforce the provisions of this section or
156 regulation adopted pursuant to this section.