

**Massachusetts House of Representatives
Bill Summary**

Bill #: H.2324 / S.1443

Title: An Act providing for the establishment of sustainable water resource funds

Sponsor: Rep. Edward Philips and Sen. James Eldridge

Committee: Municipalities and Regional Government

Hearing Date:

Prior History: Refile of H.2099/S.1283 (H.2099 OTP Accompanied by S.1283)

Current Law: Chapter 40 of MGL governs the powers and duties of cities and towns.

Section 39M authorizes a city or town, which accepts the provisions of this section, to impose a water infrastructure surcharge to fund a municipal water infrastructure investment fund. The surcharge may be an amount not to exceed 3 percent of the real estate tax levy against real property, as determined annually by the board of assessors.

"(On June 29, 2012) the Massachusetts Supreme Judicial Court (SJC) in *Denver Street LLC vs. Town of Saugus - SJC 10927* overturned a lower court ruling by concluding that charges imposed on a developer to mitigate storm water inflow and infiltration is a fee and not a tax and is therefore allowed to stand. The SJC applied the facts of the case to the well-established standard for a fee set out in *Emerson College v. Boston, 462 NE 2d 1098 (1984)*. The court ruled that the charge was sufficiently particularized to the developer, that the developer could have chosen to avoid the fee and that the fee amount was not excessive, but reasonably reflective of costs." - MA Department of Revenue summary.

Summary: This legislation amends Chapter 40 by adding a new section (39N) allowing the establishment of sustainable water resource funds and authorize cities and towns that accept the new section to remedy environmental impacts of new or increased water withdrawals caused by new or expanded development.

Subsection (a) creates a local option which may be adopted by municipalities, water districts, utilities, or other water service

providers. The city, town, district could collect a reasonable fee which could only be used to remedy and offset the impacts of new and/or increased water withdrawals, sewerage, waste or storm water discharges, impairment of recharge of groundwater through depletion of ground or surface waters and sustain the ecological health of water resources. It also lists the measures that may be taken to remedy and offset these impacts. The fee would be based upon a ratio of water saved to water used, and separate fees may be imposed for residential and commercial water users.

Subsection (b) requires the municipality, district, or other statutory authority to designate which official or board would be responsible for assessing, collecting, and expending the fee, which would be deposited into separate accounts (sustainable water resource funds) for drinking water, wastewater, or storm water purposes. This provision allows monies from public and private donations, gifts, grants, reimbursements, or similar receipts to be deposited into the special fund, and any interest earned would become part of the special fund(s).

The money received and deposited into the accounts could not be used for any other purpose except those listed in subsection (a).

Subsection (c) allows the city, town, district, or authority to revoke its acceptance of this section. Any leftover money would have to be spent in a manner consistent with this section.

Notes: Similar programs are in place in Saugus, Spencer, Weymouth, and Danvers. This legislation would effectively codify the SJC decision in the court case Denver Street LLC v. Town of Saugus