

HOUSE No. 00255

The Commonwealth of Massachusetts

PRESENTED BY:

Frank I. Smizik

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 bill:

An Act relative to sustainable water resources.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>

<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>Jay Kaufman</i>	<i>15th Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Theodore C. Speliotis</i>	<i>13th Essex</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>

HOUSE No. 00255

By Mr. Frank I. Smizik of Brookline, petition (accompanied by bill, House, No. 00255) of James M. Cantwell and others relative to establishing standards for restoring and maintaining stream flows, water levels and hydrologic regimes that protect natural aquatic life in rivers and streams..
Joint Committee on Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 834 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to sustainable water resources.

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

- 1 Whereas, water is vital to public health, safety, welfare and the environment in the
- 2 Commonwealth; and

- 3 Whereas, the Commonwealth's water resources are public resources that require sustainable
- 4 management practices for economic growth, the well being and safety of our citizens, and
- 5 protection of the natural environment; and

- 6 Whereas, it is the policy of the Commonwealth to protect the chemical, physical and biological
- 7 integrity of its surface waters and their beneficial uses for the citizens of Massachusetts; and

8 Whereas, natural stream flows and adequate water levels are necessary for protection and
9 procreation of fish and wildlife; maintenance of aquatic ecosystems, support of recreational
10 activities; preservation of aesthetic values; protection of groundwater and public water supplies;
11 the reduction of pollution; and to guard against climate change impacts; and

12 Whereas, it is in the public interest to adopt criteria and regulations to protect and restore stream
13 flows and water levels, and for communities to create sustainable water resource funds.

14 SECTION 1. Section 2 of Chapter 21G of the General Laws, as appearing in the 2010 Official
15 Edition, is hereby amended by inserting after “Department” the following definition:-

16 “Division”, the division of fisheries and wildlife.

17 SECTION 2. Section 3 of said chapter 21G, as so appearing, is hereby further amended by
18 inserting, in line 67, after the phrase “chapter twenty-one”, the following sentences:—

19 “Pursuant to chapter 30A, the department, after consultation with the advisory committee and
20 with the approval of the commission and the director of the division, shall adopt, and thereafter
21 from time to time may amend, regulations establishing standards for restoring and maintaining
22 stream flows, water levels and hydrologic regimes that are protective of natural aquatic life for
23 all rivers and streams in the commonwealth and ensure a balance among competing water
24 withdrawals and uses, as well as preservation of the water resource itself. Said regulations, which
25 shall incorporate the criteria, goals and conditions established by the division pursuant to section
26 42A of chapter 131, shall be promulgated within 1 year of the division’s establishment of the
27 criteria and shall be used in the administration of this chapter. The department’s regulations shall
28 allow the department in consultation with the division to establish such standards protective of
29 natural aquatic life for a specific river or stream.”

30 SECTION 3. Section 7 of said chapter 21G, as so appearing, is hereby further amended by
31 inserting at the end thereof the following sentence:-

32 (11) All feasible means to avoid, or if not possible, to minimize and mitigate impacts of the
33 withdrawal on the natural environment have been taken.

34 (12) Consistency with the standards adopted by the department pursuant to section 3.

35 SECTION 4. Section 8 of said chapter 21G, as so appearing, is hereby further amended by
36 inserting, in lines 21-22, after word “applicant” the following sentences:-

37 (10) A demonstration that all feasible means to avoid, or if not possible, to minimize and
38 mitigate impacts of the withdrawal on the natural environment have been taken or will be taken.
39 Mitigation shall occur upstream in the same sub-basin as the withdrawal to the maximum extent
40 practicable, and within the same basin as the withdrawal if such impacts cannot be offset in the
41 same sub-basin. Permittees may enter into agreements with third parties, including the
42 Department of Fish and Game, to implement mitigation required herein.

43 SECTION 5. Section 38 of chapter 40 of the General Laws, as appearing in the 2010 Official
44 Edition, is hereby amended by inserting, after the second paragraph, the following sentences:-

45 Notwithstanding any general or special law to the contrary, no source of water supply and no
46 lands necessary for protecting and preserving the purity of the water shall be sold by a city or
47 town to a private corporation without first obtaining the advice and consent of the department of
48 environmental protection.

49 SECTION 6. Section 39J of chapter 40 of the General Laws, as so appearing, is hereby amended
50 by inserting, in line 15, after the word " protection," the following words:- "all costs or measures
51 to ensure the long-term sustainability of the water supply,".

52 SECTION 7. Said chapter 40, as so appearing, is hereby further amended by inserting after
53 section 39L the following section:-

54 Section 39M. Establishment of Sustainable Water Resource Fund.

55 Notwithstanding any general or special law to the contrary, a city, town, board of water or sewer
56 commissioners, officers performing like duties, or water or sewer district may collect a
57 reasonable fee to be used exclusively to offset and remedy impacts of water withdrawals,
58 sewerage, or impairment of recharge of groundwater on the natural environment through
59 depletion of ground or surface waters, and to sustain the quantity, quality and ecological integrity
60 of waters of the commonwealth. Such measures for water return or water loss prevention shall
61 include without limitation, local recharge of stormwater and wastewater, reuse of water, removal
62 of infiltration and inflow, water savings achieved by retrofitting existing development with low
63 impact development methods or water-saving devices, dam removal and land acquisition only
64 for 1) wellhead protection of a public water supply or 2) for siting a decentralized wastewater
65 treatment facility.

66 The fee, which may be based on retaining within the basin or saving at least one gallon, but no
67 more than ten gallons, for every gallon of increased water or sewer demand, or net impairment of
68 recharge shall be assessed in a fair and equitable manner, and separate uniform fees may be
69 established for residential and commercial uses.

70 All such fees shall be deposited in a separate account classified as a "Sustainable Water Resource
71 Fund." This Fund shall not be used for any purpose not provided in this section. The Fund may
72 also receive monies from public and private sources as gifts, grants, and donations to further
73 water conservation, water return or water loss prevention; from the federal government as
74 reimbursements, grants-in-aid or other receipts on account of water infrastructure improvements;
75 or fines, penalties or supplemental environmental projects. Any interest earned from whatever
76 source shall be credited to and become part of said Fund.

77 SECTION 8. Chapter 40 of the General Laws, as appearing in the 2010 Official Edition, is
78 hereby amended by adding the following section:

79 Section 61.

80 (a) Any city or town which accepts the provisions of this section may elect to acquire by gift,
81 purchase, eminent domain or otherwise, any dam, as defined by section 44 of chapter 253 of the
82 General Laws, located within the town, including any real property appurtenant thereto, if such
83 dam and any appurtenant real property is not at the time of such acquisition owned or held in
84 trust by the commonwealth. In connection with such an acquisition the town may, subject to
85 appropriation, repair, reconstruct and make improvements to a town-owned dam as may be
86 necessary, in the judgment of the board of selectmen, or the town council, each manager in a city
87 having a Plan D or Plan E form of charter or the mayor, with the approval of the city council or
88 board of aldermen in any other city, to maintain, repair or improve such dam, and to accept and
89 expend grants or gifts for such purposes in accordance with section 53A of chapter 44 upon
90 approval of the board of selectmen without further appropriation.

91 (b) Upon a two-thirds vote of the voters present and voting at a meeting duly called, the
92 municipality or public authority may borrow funds for the purposes authorized in this section.
93 Any such borrowing shall be repaid within 40 years of its date of issue, and shall be outside the
94 limit of indebtedness prescribed in section 10 of chapter 44. Except as provided in this act, any
95 borrowing pursuant hereto shall be subject to the requirements of said chapter 44.

96 (c) Any dam owned by the municipality or public authority shall constitute public improvements
97 for purposes of chapter 80 and, subject to the approval of the town, the selectmen, or the town
98 council, each manager in a city having a Plan D or Plan E form of charter or the mayor, with the
99 approval of the city council or board of aldermen in any other city, may assess betterments to
100 pay any and all costs, of or relating to, acquiring, owning, maintaining or improving any such
101 dam. Such betterments may be assessed upon properties benefiting from the acquisition,
102 ownership, repair, maintenance or improvement of such a dam and in such amounts as the
103 authorized board or official shall determine. Except as otherwise provided by this act, any
104 betterment so assessed shall be subject to said chapter 80. Any betterment assessed pursuant to
105 this act may be apportioned for a maximum term of 40 years.

106 (d) Notwithstanding any general or special law to the contrary, the municipality or public
107 authority shall have no liability for or related to the presence, release or threat of release of oil or
108 any hazardous material with respect to any dam or dams acquired by the town in accordance with
109 section that occurred prior to the date any such dam or dams were acquired by the town.

110 SECTION 9. Chapter 131 of the General Laws, as appearing in the 2010 Official Edition, is
111 hereby amended by inserting, after section 42, the following section:-

112 Section 42A. Consistent with Sections 3 of Chapter 21G of the General Laws, which provides
113 for establishing a mechanism for managing ground and surface water in the commonwealth as a
114 single hydrological system and ensuring, where necessary, a balance among competing water
115 withdrawals and uses and that factors are considered, the division shall establish:

116 (1) Aquatic habitat criteria that define specific attributes necessary to maintain and restore
117 stream flows, water levels and hydrologic regimes that are protective of natural aquatic life for
118 all rivers and streams in the commonwealth. Such criteria shall be based on the best scientific
119 evidence and methodologies available and shall be based on and provide for the natural variation
120 of stream flows, and water levels adequate to ensure their chemical, biological and physical
121 integrity. The criteria shall:

122 (a) Protect and restore the natural hydrological cycle and its natural variability including, but
123 not limited to its seasonality, magnitude, frequency, duration, timing and rate of change.

124 (b) Be based to the extent practical on the site specific attributes of water sources and the
125 river and coastal watersheds within which they are contained and shall provide, to the extent
126 possible, site-specific guidelines and monitoring requirements at the appropriate ecologic and
127 hydrologic scales.

128 (c) Include specific criteria designed to protect the most limiting hydrologic condition at
129 which water quality criteria must be applied at the appropriate ecological scale in rivers and
130 streams with permitted wastewater discharges.

131 These aquatic habitat criteria shall be based on and support the attainment of aquatic habitat
132 goals for water sources defined at an appropriate ecological scale. The division shall, in
133 consultation with the Department of Environmental Protection, the Department of Conservation

134 and Recreation and the Department of Agricultural Resources, define goals necessary to support
135 aquatic health, defined as native, naturally diverse community of aquatic dependent flora and
136 fauna. These goals shall be based on the best available science about the conditions necessary to
137 support native, naturally diverse communities of aquatic dependent flora and fauna including, but
138 not limited to, fluvial, coldwater and migratory fish, found, or expected to be naturally found, in
139 the water sources and the river and coastal watersheds within which they are found.

140 The division shall describe and define the range of existing aquatic habitat conditions currently
141 found in Massachusetts, and shall, as necessary, update this condition assessment. Such
142 conditions shall be based on the best available and using appropriate and generally accepted
143 statistical methods.

144 Within one year of the effective date of this act, the division shall adopt these criteria, goals and
145 condition descriptions for all rivers and streams.

146 SECTION 10. Definitions.

147 (a) Section 44 of chapter 253 of the General Laws, as appearing in the 2010 Official Edition, is
148 hereby amended by adding after line 2 the following new definition: “Abandoned”, a dam that
149 has no identifiable owner or a dam whose owner fails to respond to the owner’s obligations
150 under sections 44 to 48, inclusive, based on any emergency action taken by the commissioner
151 pursuant to section 47, and the creation of a lien upon the lot or lots of land on which the dam is
152 situated and upon the buildings and structures on said lot or lots pursuant to section 48.

153 (b) Section 44 of chapter 253 is further amended by inserting in line 9 after the word “any” the
154 following words: “manmade”

155 (c) Section 44 of chapter 253 of the General Laws is further amended by inserting in line 17
156 after the words “property or safety” the following words: “or which could cause significant harm
157 to the aquatic ecosystem”.

158 (d) Section 44 of chapter 253 is further amended in line 32 by striking the words “environmental
159 management” and inserting in place thereof the following words: “conservation and recreation”

160 (e) Section 44 of chapter 253 is further amended by adding after the definition of “Owner” the
161 following definition: “Remove,” or “Removal,” the controlled dismantlement or breaching of a
162 dam to the extent that water is not impounded or diverted by the dam and fish passage is no
163 longer impeded and which is dismantled in compliance with applicable laws and regulations of
164 the Commonwealth; provided, that a minimal degree of impoundment needed for agricultural
165 uses to retain wetlands and open water conditions may be allowed following controlled
166 dismantlement or breaching of a dam, while removing any impediment to fish passage or
167 alleviating threats to safety or property.

168 SECTION 10. Dam Removal.

169 (a) Section 46 of said chapter 253 of the General Laws, as appearing in the 2010 Official
170 Edition, is hereby amended in line 14 by inserting after the words “to be unsafe” the following
171 words: “or abandoned”

172 (b) Section 46 of said chapter 253 is further amended in line 22 by inserting after the words “the
173 dam into a safe condition” the following words: “or safely remove the dam”.

174 (c) Section 46A of said chapter 253 is hereby amended in line 1 by inserting 35 after the word
175 “removed” the following word: “repaired,”

176 (d) Section 46A of said chapter 253 is further amended by inserting in line 5 after the words “the
177 owner approving” the following words: “or safely removing”

178 (e) Section 46A of said chapter 253 is further amended by deleting in line 7 the words “life and
179 property,” and inserting in place thereof the following words: “safety, property or the
180 environment.”

181 (f) Section 47 of said chapter 253 is hereby amended by inserting in line 6 after the words
182 “operational condition,” the following words: “or remove the dam”

183 SECTION 11. Enforcement.

184 Section 47 of said chapter 253 is hereby amended by striking in line 22 the words “not to exceed
185 \$500” and inserting in place thereof the following words: “up to twenty five thousand dollars.”

186 SECTION 12. Administration.

187 Chapter 253 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended
188 by inserting, after section 47, the following section:-

189 Section 47A. Administration

190 (a) The commissioner of the department of conservation and recreation (hereinafter referred to
191 as the commissioner), in conjunction with the commissioner of fish and game, the division of
192 fish and wildlife and the riverways program shall on or before July 1, 2011, complete a detailed
193 inventory of all dams on public and private property in the Commonwealth. The commissioner
194 shall update such dam inventory on an annual basis. The commissioner shall submit the
195 inventory in a report to the joint committee on environment, natural resources and agriculture

196 and to the senate and house committees on ways and means. This report shall include the
197 following detailed information:

198 (1) A comprehensive list of the person, agency, municipality, or entity that owns and operates
199 every dam and the location of every dam where such ownership or operation has been registered
200 with the Office of Dam Safety.

201 (2) A list of specific owners who have failed to meet regulatory requirements, including but not
202 limited to, registration and inspection requirements.

203 (3) A classification of the status of all hazardous dams that pose a threat to public health, safety,
204 welfare, and property or the environment and when or whether they have been repaired,
205 including, where applicable, the presence of polluted and/or hazardous underwater sediment
206 present in the retained area of a dam.

207 (4) A comprehensive list of dams that are abandoned as defined in section 44 of chapter 253 of
208 the General Laws.

209 (5) A comprehensive list of all dams whose existence, condition or operation pose a threat to
210 freshwater animal and plant and resident or migratory fish species habitat or movement.

211 (a) The commissioner must ensure Emergency Action Plans are developed for all High Hazard
212 Dams and Significant Hazard Dams, as defined in regulation. An Emergency Action Plan
213 template shall be developed and available for all dam owners. The commissioner shall ensure
214 that necessary local and state dam safety officials have immediate access to such Plans in the
215 event of a potential dam failure.

216 (b) The commissioner shall develop an inspection schedule, as required by dam safety
217 regulations, to ensure that all High Hazard, Significant Hazard, as Low Hazard Dams, as defined
218 in regulation, are inspected no less than every five years.

219 (c) The Commissioner shall review the hazard classifications of all dams at least every five
220 years, to ensure the accuracy of the dam classification.

221 (d) The Secretary of the Executive Office of Environmental Affairs shall ensure capital funds are
222 available for dam assessment, repair and removal of all dams statewide.

223 (e) The Secretary of Environmental Affairs shall write and implement a \$20,000,000 revolving
224 loan fund for private dam owners to inspect, repair, and remove dams, with the assistance of the
225 Secretary of Administration and Finance. Such Fund shall be paid for through the Capital budget.

226 SECTION 13. Construction.

227 Nothing in this chapter shall be interpreted in any way to alter or amend any permitting
228 requirements, reporting requirements, allocation procedures, or other requirements set forth in
229 any other provision of the general laws.