

HOUSE No. 983

The Commonwealth of Massachusetts

PRESENTED BY:

Sarah K. Peake

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:	DATE ADDED:
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>2/8/2021</i>
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>2/22/2021</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>	<i>2/22/2021</i>
<i>Jessica Ann Giannino</i>	<i>16th Suffolk</i>	<i>2/24/2021</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>	<i>2/24/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/24/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/25/2021</i>
<i>Steven C. Owens</i>	<i>29th Middlesex</i>	<i>2/25/2021</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/25/2021</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>2/26/2021</i>
<i>Brandy Fluker Oakley</i>	<i>12th Suffolk</i>	<i>2/26/2021</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>2/26/2021</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>2/26/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/26/2021</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>2/26/2021</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/26/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>3/5/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>3/12/2021</i>

<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>3/12/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/12/2021</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>3/12/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>3/18/2021</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>3/18/2021</i>
<i>Kip A. Diggs</i>	<i>2nd Barnstable</i>	<i>3/26/2021</i>

HOUSE No. 983

By Ms. Peake of Provincetown, a petition (accompanied by bill, House, No. 983) of Sarah K. Peake and others relative to establishing a Massachusetts flood risk protection program. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act establishing a Massachusetts flood risk protection program.

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

1 Preamble

2 Climate change is causing significant increases in sea level, floods and storms, and
3 threatening the environment, human health and safety. Becoming resilient to these impacts
4 depends on the commonwealth’s ability to visualize and adapt to flood risk today and into the
5 future. The statewide flood risk protection program is voluntary and creates and implements a
6 long term strategy to facilitate the acquisition of property from willing property owners at risk of
7 being inundated by floods, and that suffer, or are projected to suffer, repetitive or substantial
8 flood damage. The program relies on nature-based solutions to protect communities from climate
9 impacts today and in the future; prioritizes the allocation of benefits to low-income residents and
10 environmental justice populations; and creates a new trust fund intended to be funded using state
11 funds and to leverage local, federal and private funds and insurance programs with the same or
12 similar purposes.

13 Section 1. Flood Risk Protection Program

14 Notwithstanding any special or general law to the contrary, the secretaries of the
15 executive office of energy and environmental affairs, executive office of housing and economic
16 development, and executive office of public safety and security shall develop and administer a
17 statewide flood risk protection program. The program shall acquire properties which are, or are
18 projected to be, repetitively or substantially damaged by floods. Funds deposited in the flood risk
19 protection trust fund shall cover the acquisition of property from willing owners; structure
20 demolition; relocation of impacted property owners, tenants and lessees; coastal, floodplain and
21 wetland restoration; and creation of open space for conservation and recreational purposes to be
22 protected in perpetuity.

23 Section 2. Definitions

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

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

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

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

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

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

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

38 Section 3. Program Eligibility

39 The following shall be eligible under this program:

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

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

45 Section 4. Program Requirements

46 The following shall be requirements under this chapter:

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

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

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

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

58 (e) New and permanent engineered structures and other improvements shall not be
59 erected on any property acquired under this chapter unless such structures or improvements are
60 critical to complete a nature-based solutions project, are open on all sides (restrooms excepted),
61 can be easily moved, and are functionally related to open space use. These restrictions, along
62 with the right to enforce the same, are deemed to be covenants running with the land in
63 perpetuity and are binding on subsequent successors, grantees, or assigns.

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

66 Section 5. Statewide Flood Risk Assessment and Standards

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

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

76 (1) Properties that are a flood risk.

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

79 (3) Clustered properties or contiguous properties.

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

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

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

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

92 Section 6. Roles and Responsibilities

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

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

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

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

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

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

108

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

113 Section 7. Flood Risk Protection Program Trust Fund

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

122 (2) Amounts credited to the fund may be used, without further appropriation, to
123 provide grants to an eligible entity, as defined by this chapter, costs associated with
124 implementation of the flood risk protection program including upfront costs or reimbursement
125 for (a) the acquisition of property; (b) fees for necessary appraisals, title searches, title insurance,
126 property inspections, and surveys, environmental assessments and other necessary site-specific
127 due diligence; (c) the controlled demolition, removal and disposal of buildings and structures.
128 Buildings and structures deemed historically significant will be documented and options for
129 relocation or deconstruction shall be explored before they are demolished. Archaeological
130 resources will be documented and saved under the supervision of a professional archaeologist,
131 and if applicable, in consultation with a tribal representative; (d) relocation assistance for
132 homeowners, tenants and lessees; and (e) site restoration and stabilization including nature-based
133 solutions that enhance climate resiliency and restore and conserve fish and wildlife habitat.

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

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

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

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

148 Section 8. Regulations

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

153 Section 9. Interagency Coordination

154 The secretaries of the executive office of energy and environmental affairs, executive
155 office of housing and economic development, and executive office of safety and security shall
156 enlist, engage, collaborate and coordinate with external experts and stakeholders regarding the
157 creation and implementation of the flood risk protection program. Such experts and stakeholders

158 shall include but are not limited to the environmental justice advisory council established by
159 section 62L of chapter 30 of the general laws, the global warming solutions act implementation
160 advisory committee, and homeowners, tenants, insurers, and municipal officials.