

HOUSE No. 01168

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 passage 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

HOUSE No. 01168

By Ms. Marty Walz of Boston, petition (accompanied by bill, House, No. 01168) of Byron Rushing and others for legislation to protect groundwater. Joint Committee on 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 forthwith 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:

- 1 SECTION 1. Section 2 of chapter 21A of the General Laws, as appearing in the 2008 Official
- 2 Edition, is hereby amended by inserting after paragraph (30) the following paragraph:-
- 3 (31) participate in a City/State Groundwater Working Group as described in a memorandum of
- 4 understanding, as it may be amended from time to time, entered into as of the fifteenth day of

5 September 2005 by the office, certain state authorities, the city of Boston, certain city of Boston
6 agencies and commissions, and the Boston Groundwater Trust.

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

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

20 Purpose. The purpose of the Massachusetts Groundwater Protection Act is to protect structures
21 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 or in
26 part, below the adjacent ground surface.

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

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

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

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

35 "Department", the Department of Environmental Protection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

72 Powers and Duties of the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

129 Each permit issued pursuant to this subsection shall require as a condition to the permit the

130 Recharge of groundwater being removed to the maximum extent feasible;

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

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

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

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

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

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

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

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

150 Within 180 days from the effective date of this chapter, the Department shall establish rules for
151 disbursement of the funds from the Groundwater Protection Fund, which shall include provisions

152 for the periodic disbursement in equal portions to: (i) the Department for its administrative costs
153 in carrying out the provisions of this chapter; (ii) Local Agencies within Covered Communities
154 for carrying out their administrative and enforcement responsibilities pursuant to the provisions
155 of this chapter; and (iii) the Groundwater Protection Loan Fund.

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

159 Within 180 days from the effective date of this chapter, the Department shall promulgate
160 regulations for the funding and administration of the Groundwater Protection Remedial Fund.

161 Duties and Obligations of Covered Communities.

162 Applicability

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

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

170 Any legal resident of said city or town shall have the right to petition the Groundwater Protection
171 Board for review of the applicability determination made by a city or town pursuant to the
172 provisions of this section if such city or town determined that buildings or other structures

173 located within its duly constituted boundaries are not supported by wooden pilings that are
174 structurally dependent on coverage by groundwater..

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

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

180 Impacted Areas

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

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

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

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

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

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

200 Sump Pump Removal Program.

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

204 Each Residential Building Owner within an Impacted Area shall ascertain whether a sump pump
205 is present on such property. In the event that no sump pump exists, the owner shall certify that
206 fact according to the procedures set forth below. In the event that a sump pump does exist, the
207 property shall be subject to a groundwater removal fee, unless said owner has permanently
208 disconnected the sump pump from the sewer or other conveyance and re-directed the flow to a
209 Recharge Well, or taken other measures to eliminate the need for a sump pump. If the sump
210 pump has not been disconnected, said owner must install a utility meter to monitor and record
211 the volume of groundwater removed, and said owner must pay the groundwater removal fee
212 established pursuant to section (d). The owner shall certify that (i) the sump pump has been
213 permanently disconnected or (ii) said owner has installed a utility meter and made application to

214 the Local Agency subjecting the property to payment of groundwater removal fees. The owner
215 shall sign and record the certification document at the Registry of Deeds.

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

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

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

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

228 Within 12 months of the effective date of this chapter, all such owners or operators must either:

229 (1) have permanently disconnected their sump pumps or other groundwater conveyances from
230 the sewer or other pipes or conduits that transport groundwater off their property; (2) have
231 installed a utility meter (or meters) to monitor and record the volumes pumped and pay fees in
232 accordance with the fee schedule established pursuant to this chapter; or (3) have installed and
233 connected the sump pumps or other conveyances to a groundwater Recharge Well (or wells) of
234 sufficient capacity to return the anticipated volume of pumped (or otherwise removed)
235 groundwater to below the ground surface of potentially impacted property. Groundwater

236 removal fees shall not be charged for groundwater pumped or otherwise removed from the
237 property if the water is discharged into a Recharge Well (or wells) heretofore or thereafter;

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

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

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

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

252 Each Infrastructure Owner or Operator within an Impacted Area shall commence and diligently
253 pursue the necessary repairs to any existing groundwater leaks within 45 days of discovery; and
254 continuously thereafter monitor, repair, and maintain all Underground Infrastructure owned or
255 operated within an Impacted Area in accordance with this Act. The Department may issue
256 extensions to Infrastructure Owners or Operators upon a showing of good cause.

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

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

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

272 Injunction. In addition to collecting any civil penalties recoverable pursuant to this chapter, or in
273 the event that money damages are inadequate, the Department may request the attorney general
274 to bring an action in the superior court to restrain, prevent or enjoin any conduct by any Owner
275 or Operator that is prohibited by this chapter, or to compel action to comply immediately and
276 fully with any order issued by the Department. Except in cases of emergency where a court has
277 determined that immediate abatement of the unlawful conduct is required to protect the public or
278 private interest, the court may in its discretion fix a reasonable time during which the Owner or

279 Operator responsible for the unlawful conduct shall abate and correct the violation. The expense
280 of the proceeding shall be recoverable from the violator in such manner as may now or hereafter
281 be provided by law.

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

292 **Access.** For the purpose of determining compliance with this chapter or any regulations adopted
293 thereunder, the duly authorized agents and employees of the Department and Local Agencies
294 may at all reasonable times, upon obtaining a court order allowing the Department access or
295 upon obtaining the voluntary consent of the Residential Building Owner, Other Building Owner,
296 and Infrastructure Owner or Operator, enter and examine any Building or Underground
297 Infrastructure potentially causing groundwater removal. The owner or operator with the
298 authority or control over the Building or Underground Infrastructure, upon presentation of proper
299 identification and purpose for inspection by the agents or employees of the Local Agency or
300 Department, shall give such agents and employees free and unrestricted entry and access. Such
301 agents and employees are authorized to conduct any inspection, monitoring or sampling

302 necessary for the administration or enforcement of this chapter. Notwithstanding the foregoing,
303 when there is an actual or threatened risk to the integrity of nearby surface or subsurface
304 structures, the Local Agency and Department is authorized to enter and examine any Building or
305 Underground Infrastructure as necessary for the administration or enforcement of this chapter.
306 In such cases, the Local Agency and Department is authorized to seek immediate injunctive
307 action from a court of competent jurisdiction to halt any activity imminently jeopardizing the
308 structural integrity of the Building or Underground Infrastructure itself, or nearby surface or
309 subsurface structures.

310 Groundwater Protection Board.

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

318 The Board shall consist of 15 members, a majority of whom must have expertise in civil or
319 geotechnical engineering, architecture, or prior experience in studies or investigations concerning
320 groundwater and wooden pilings. Five members of the Board shall be appointed by the
321 governor, five shall be appointed by the speaker of the house of representatives, and five shall be
322 appointed by the president of the senate. Each member shall serve for a term of three years.
323 Members may be reappointed for additional terms without limitation.

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

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

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

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

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

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

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

348 The Board shall further have the power to:

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

352 Issue civil penalties consistent with this chapter;

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

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

359 Require the payment of damages to injured parties; and

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

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

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

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

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

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

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

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

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

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

388 Miscellaneous.

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

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

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

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

400 (q) Any owner of residential property located in the commonwealth who is not a dependent of
401 another taxpayer and who occupies said property as his principal residence, shall be allowed a
402 credit equal to 40 per cent of the expenditures for the repair of a private sewer lateral, the
403 installation of an groundwater recharge system, or the inspection or repair of wood pilings used
404 to support the foundation of the property that may be or have been damaged due to groundwater
405 depletion. Said expenditures shall be the actual cost to the taxpayer or \$15,000, whichever is

406 less; provided, however, that said credit shall be available to eligible taxpayers beginning in the
407 tax year in which the work was completed; and provided, further, that said credit shall not exceed
408 \$1,500 in any tax year and any excess credit may be applied over the following five subsequent
409 tax years up to an aggregate maximum of \$6,000. The amount of any such credit shall be
410 reduced by an amount equal to the total grant or subsidy received from any governmental entity,
411 whether directly or indirectly, toward the cost of said expenditures. The Department of Revenue
412 shall promulgate such rules and regulations as are necessary to administer the credit afforded by
413 this subsection, and shall consult with the Department of Environmental Protection in developing
414 such rules, regulations, including defining eligible projects and costs, for said tax credit.

415 SECTION 5. Notwithstanding any general or special law to the contrary, the secretary of the
416 executive office of energy and environmental affairs, in cooperation with other state and federal
417 agencies, shall prepare a preliminary map of tidelands and landlocked tidelands as both are
418 defined in section 1 of chapter 91 and great ponds. The department of environmental protection
419 and the department of fish and game and other applicable state agencies shall provide
420 information to the secretary in the preparation of the preliminary map. The preliminary map
421 shall depict, where feasible (1) the boundaries of properties lying within and abutting tidelands,
422 landlocked tidelands and great ponds and (2) which tidelands are private tidelands and which are
423 Commonwealth tidelands as both are defined in section 1 of chapter 91.

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