

HOUSE No. 829

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 protecting groundwater levels.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>

HOUSE No. 829

By Ms. Walz of Boston, a petition (accompanied by bill, House, No. 829) of Martha M. Walz and others for legislation to protect groundwater. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE

HOUSE
 , NO. 1168 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act protecting groundwater levels.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is 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 2010
2 Official Edition, is hereby amended by striking out clauses (29) and (30) and inserting in place
3 thereof the following clauses:-

4 (29) consistent with their statutory responsibilities, implement the coastal zone
5 management program established pursuant to section 4A;

6 (30) consistent with chapter 21N, oversee state agency efforts to address and diminish the
7 impacts of climate change by coordinating state agency actions to achieve the greenhouse gas
8 emissions limits established in chapter 21N; and

9 (31) participate in a City/State Groundwater Working Group established in a
10 memorandum of understanding, entered into on September 15, 2005, by the office, certain state

11 authorities, the city of Boston, certain city of Boston agencies and commissions and the Boston
12 Groundwater Trust.

13 SECTION 2. Section 8 of said chapter 21A of the General Laws, as so appearing, is
14 hereby amended by inserting, after the first paragraph, the following paragraph:

15 The department of environmental protection shall be vested with all the powers and
16 duties which relate to groundwater supply and groundwater protection necessary to implement
17 the provisions of chapter 21P, including the promulgation of all necessary and appropriate
18 regulations. The department of environmental protection shall, in its sole discretion, charge an
19 existing bureau with responsibility to implement the provisions of chapter 21P or create a new
20 bureau for that purpose.

21 SECTION 3. The General Laws are hereby amended by inserting after chapter 21O the
22 following chapter:

23 CHAPTER 21P MASSACHUSETTS GROUNDWATER PROTECTION ACT.

24 Short Title. This chapter shall be known and may be cited as the "Massachusetts
25 Groundwater Protection Act".

26 Purpose. The purpose of the Massachusetts Groundwater Protection Act is to protect
27 structures supported by wooden pilings from damage due to lowered groundwater.

28 Definitions. As used in this chapter, the following words shall, unless the context clearly
29 indicates otherwise, have the following meanings:

30 "Act", the Massachusetts Groundwater Protection Act.

31 "Basement", an enclosed structure underneath a building, the floor of which is, in whole
32 or in part, below the adjacent ground surface.

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

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

37 "City/State Groundwater Working Group", the state and other authorities, agencies, and
38 departments that are signatories to the Memorandum of Understanding dated September 15,
39 2005, and who have been active participants in the quarterly meetings held subsequently, and
40 also including subsequent signatories.

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

42 "Department", the Department of Environmental Protection.

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

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

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

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

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

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

56 "Owner or Operator", any Residential Building Owner, Other Building Owner, or
57 Underground Infrastructure Owner or Operator.

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

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

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

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

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

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

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

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

81 Powers and Duties of the Department.

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

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

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

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

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

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

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

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

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

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

122 The Department shall promulgate regulations governing the issuance of groundwater
123 removal permits for any construction, excavation, renovation, operation or other groundwater
124 removal activities being conducted within an Impacted Area. Said regulations shall set forth the
125 criteria, standards and procedures for issuing groundwater removal permits and shall establish a
126 schedule for groundwater removal fees. Upon the effective date of the Department's regulations,
127 no groundwater shall be removed from any groundwater source within an Impacted Area a
128 groundwater removal permit obtained from the Department. Said regulations shall further
129 provide, at a minimum, that:

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

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

139 Each permit issued pursuant to this subsection shall require as a condition to the permit
140 the Recharge of groundwater being removed to the maximum extent feasible;

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

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

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

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

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

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

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

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

160 Within 180 days from the effective date of this chapter, the Department shall establish
161 rules for disbursement of the funds from the Groundwater Protection Fund, which shall include
162 provisions for the periodic disbursement in equal portions to: (i) the Department for its
163 administrative costs in carrying out the provisions of this chapter; (ii) Local Agencies within
164 Covered Communities for carrying out their administrative and enforcement responsibilities
165 pursuant to the provisions of this chapter; and (iii) the Groundwater Protection Loan Fund.

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

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

171 Duties and Obligations of Covered Communities.

172 Applicability

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

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

181 Any legal resident of said city or town shall have the right to petition the Groundwater
182 Protection Board for review of the applicability determination made by a city or town pursuant to
183 the provisions of this section if such city or town determined that buildings or other structures
184 located within its duly constituted boundaries are not supported by wooden pilings that are
185 structurally dependent on coverage by groundwater..

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

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

191 Impacted Areas

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

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

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

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

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

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

211 Sump Pump Removal Program.

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

215 Each Residential Building Owner within an Impacted Area shall ascertain whether a
216 sump pump is present on such property. In the event that no sump pump exists, the owner shall
217 certify that fact according to the procedures set forth below. In the event that a sump pump does
218 exist, the property shall be subject to a groundwater removal fee, unless said owner has
219 permanently disconnected the sump pump from the sewer or other conveyance and re-directed
220 the flow to a Recharge Well, or taken other measures to eliminate the need for a sump pump. If
221 the sump pump has not been disconnected, said owner must install a utility meter to monitor and
222 record the volume of groundwater removed, and said owner must pay the groundwater removal
223 fee established pursuant to section (d). The owner shall certify that (i) the sump pump has been
224 permanently disconnected or (ii) said owner has installed a utility meter and made application to
225 the Local Agency subjecting the property to payment of groundwater removal fees. The owner
226 shall sign and record the certification document at the Registry of Deeds.

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

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

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

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

239 Within 12 months of the effective date of this chapter, all such owners or operators must
240 either: (1) have permanently disconnected their sump pumps or other groundwater conveyances
241 from the sewer or other pipes or conduits that transport groundwater off their property; (2) have
242 installed a utility meter (or meters) to monitor and record the volumes pumped and pay fees in
243 accordance with the fee schedule established pursuant to this chapter; or (3) have installed and
244 connected the sump pumps or other conveyances to a groundwater Recharge Well (or wells) of
245 sufficient capacity to return the anticipated volume of pumped (or otherwise removed)
246 groundwater to below the ground surface of potentially impacted property. Groundwater
247 removal fees shall not be charged for groundwater pumped or otherwise removed from the
248 property if the water is discharged into a Recharge Well (or wells) heretofore or thereafter;

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

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

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

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

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

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

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

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

284 Injunction. In addition to collecting any civil penalties recoverable pursuant to this
285 chapter, or in the event that money damages are inadequate, the Department may request the
286 attorney general to bring an action in the superior court to restrain, prevent or enjoin any conduct
287 by any Owner or Operator that is prohibited by this chapter, or to compel action to comply
288 immediately and fully with any order issued by the Department. Except in cases of emergency
289 where a court has determined that immediate abatement of the unlawful conduct is required to
290 protect the public or private interest, the court may in its discretion fix a reasonable time during
291 which the Owner or Operator responsible for the unlawful conduct shall abate and correct the
292 violation. The expense of the proceeding shall be recoverable from the violator in such manner
293 as may now or hereafter be provided by law.

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

304 Access. For the purpose of determining compliance with this chapter or any regulations
305 adopted thereunder, the duly authorized agents and employees of the Department and Local
306 Agencies may at all reasonable times, upon obtaining a court order allowing the Department
307 access or upon obtaining the voluntary consent of the Residential Building Owner, Other
308 Building Owner, and Infrastructure Owner or Operator, enter and examine any Building or
309 Underground Infrastructure potentially causing groundwater removal. The owner or operator
310 with the authority or control over the Building or Underground Infrastructure, upon presentation
311 of proper identification and purpose for inspection by the agents or employees of the Local
312 Agency or Department, shall give such agents and employees free and unrestricted entry and
313 access. Such agents and employees are authorized to conduct any inspection, monitoring or
314 sampling necessary for the administration or enforcement of this chapter. Notwithstanding the
315 foregoing, when there is an actual or threatened risk to the integrity of nearby surface or
316 subsurface structures, the Local Agency and Department is authorized to enter and examine any
317 Building or Underground Infrastructure as necessary for the administration or enforcement of
318 this chapter. In such cases, the Local Agency and Department is authorized to seek immediate
319 injunctive action from a court of competent jurisdiction to halt any activity imminently
320 jeopardizing the structural integrity of the Building or Underground Infrastructure itself, or
321 nearby surface or subsurface structures.

322 Groundwater Protection Board.

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

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

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

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

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

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

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

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

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

361 The Board shall further have the power to:

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

365 Issue civil penalties consistent with this chapter;

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

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

372 Require the payment of damages to injured parties; and

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

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

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

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

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

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

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

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

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

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

404 Miscellaneous.

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

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

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

414 SECTION 4. Section 6 of Chapter 62 of the General Laws, as appearing in the 2010
415 Official Edition, is hereby amended by inserting after subsection (r), as added by section 65 of
416 chapter 68 of the acts of 2011, the following subsection:-

417 (s) Any owner of residential property located in the commonwealth who is not a
418 dependent of another taxpayer and who occupies said property as his principal residence, shall be
419 allowed a credit equal to 40 per cent of the expenditures for the repair of a private sewer lateral,
420 the installation of an groundwater recharge system, or the inspection or repair of wood pilings
421 used to support the foundation of the property that may be or have been damaged due to
422 groundwater depletion. Said expenditures shall be the actual cost to the taxpayer or \$15,000,
423 whichever is less; provided, however, that said credit shall be available to eligible taxpayers
424 beginning in the tax year in which the work was completed; and provided, further, that said
425 credit shall not exceed \$1,500 in any tax year and any excess credit may be applied over the

426 following five subsequent tax years up to an aggregate maximum of \$6,000. The amount of any
427 such credit shall be reduced by an amount equal to the total grant or subsidy received from any
428 governmental entity, whether directly or indirectly, toward the cost of said expenditures. The
429 Department of Revenue shall promulgate such rules and regulations as are necessary to
430 administer the credit afforded by this subsection, and shall consult with the Department of
431 Environmental Protection in developing such rules, regulations, including defining eligible
432 projects and costs, for said tax credit.

433 SECTION 5. Notwithstanding any general or special law to the contrary, the secretary of
434 energy and environmental affairs, in cooperation with other state and federal agencies, shall
435 prepare a map of tidelands and landlocked tidelands, as defined in section 1 of chapter 91. The
436 department of environmental protection, the department of fish and game and other applicable
437 state agencies shall provide information to the secretary in the preparation of the map. The map
438 shall depict, where feasible, (1) the boundaries of properties lying within and abutting tidelands
439 and landlocked tidelands and (2) which tidelands are private tidelands and which are
440 Commonwealth tidelands as defined in section 1 of chapter 91.

441 The secretary shall file a report with the clerks of the senate and house of representatives
442 who shall forward the same to the joint committee on environment, natural resources and
443 agriculture on or before July 31, 2013. The report shall include the map of tidelands and
444 landlocked tidelands.