

SENATE No. 370

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen M. Brewer

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 public water supply lands.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Stephen M. Brewer	Worcester, Hampden, Hampshire and Franklin
Christopher J. Donelan	2nd Franklin
Todd M. Smola	1st Hampden
Matthew C. Patrick	3rd Barnstable
John F. Quinn	9th Bristol
George N. Peterson, Jr.	9th Worcester
David M. Nangle	17th Middlesex
John J. Binienda	17th Worcester
James Arciero	2nd Middlesex
Bruce E. Tarr	First Essex and Middlesex
Susan C. Fargo	Third Middlesex
Paul McMurtry	11th Norfolk
Stephen R. Canessa	12th Bristol
Anne M. Gobi	5th Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00488 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROTECT PUBLIC WATER SUPPLY LANDS.

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. Chapter 40 of the General Laws is hereby amended by striking out section
2 39G, as appearing in the 2004 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 39G. Whoever willfully or wantonly corrupts, pollutes or diverts any of the waters taken
5 or held under said sections 39A to 39E, inclusive, or injures any structure, work or other property
6 owned, held or used by a town under the authority and for the purposes of said sections, shall
7 forfeit and pay to said town 3 times the amount of damages assessed therefore, to be recovered in
8 an action of tort; and upon conviction of any one of the above willful or wanton acts shall be
9 punished by a fine of not more than \$5,000 or by imprisonment in state prison for not more than
10 5 years or in the house of correction for not more than 2½ years, or by both such fine and
11 imprisonment.

12 SECTION 2. Chapter 92A1/2 of the General Laws is hereby amended by striking out
13 section 9, as so appearing, and inserting in place thereof the following section:-

14 Section 9. A person who without lawful authority takes or diverts water from a water supply
15 within the watershed system of the division, or who corrupts or defiles the water supply, or a
16 source of the water supply, or who injures, destroys or interferes with property held or used by
17 the authority for the purpose of constructing, operating or maintaining the watershed system, or
18 who violates or refuses to comply with a rule, regulation or order of the department shall be
19 punished by a criminal fine of not more than \$50,000 or by imprisonment in state prison for not
20 more than 5 years or in the house of correction for not more than 2½ years, or by both such fine
21 and imprisonment. In cases of continuing violation, the maximum fine shall be \$10,000 day for
22 each day the violation occurs or continues. Notwithstanding any limitation on criminal penalties
23 set forth in the preceding sentence, a person convicted of the wanton or malicious destruction of
24 or injury to property used in the construction, operation or maintenance of the watershed system
25 shall also be liable in tort to the department for triple the amount of damages thereby caused. The
26 fine or tort judgment shall be payable to the treasury of the commonwealth.

27 SECTION 3. Chapter 111 of the General Laws is hereby amended by striking out section
28 170, as so appearing, and inserting in place thereof the following section:-

29 Section 170. Whoever willfully and maliciously defiles or corrupts a spring or other source of
30 water, or reservoir, or destroys or injures a pipe, conductor of water or other property pertaining
31 to an aqueduct, or aids or abets in the trespass, shall be punished by a fine of not more than
32 \$25,000 for each day that the willful and malicious activity occurs or continues, or by
33 imprisonment in state prison for not more than 5 years or in the house of correction for not more
34 than 2½ years, or by both such fine and imprisonment. Whoever otherwise defiles or corrupts a
35 spring or other source of water, or reservoir, or destroys or injures a pipe, conductor of water or

36 other property pertaining to an aqueduct shall be subject to a civil penalty not to exceed \$25,000
37 for each day that the violation occurs or continues.

38 SECTION 4. Chapter 266 of the General Laws is hereby amended by inserting after
39 section 123, as so appearing, the following section:-

40 Section 123A. (a) Whoever willfully trespasses upon any public source of water or public water
41 supply facilities or land, after having been forbidden to do so by a person who has lawful control
42 of the water, facilities or land, or an agent thereof, whether directly or by notice posted thereon,
43 with the intent to corrupt, pollute or defile such public source of water, shall be punished by a
44 fine of not less than \$1,000 nor more than \$5,000 or by imprisonment in the house of correction
45 for not more than 2½ years or in state prison for not more than 5 years, or by both such fine and
46 imprisonment. Whoever is convicted of a second or subsequent violation of this section shall be
47 punished by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment in state
48 prison for not less than 5 years nor more than 10 years, or by both such fine and imprisonment.

49 (b) Whoever willfully trespasses upon any public source of water or public water supply
50 facilities or land, after having been forbidden to do so by a person who has lawful control of the
51 water, facilities or land, or an agent thereof, whether directly or by notice posted thereon, shall be
52 punished by a fine of not less than \$250 nor more than \$1,000.

53 (c) In addition to such punishment, and not in lieu thereof, restitution in the amount of costs
54 associated with water quality analysis and any subsequent investigation to determine water safety
55 and security of the facilities or land may be ordered by the court, after a hearing relative to such
56 restitution.

57 (d) A law enforcement officer may arrest without a warrant any person he has probable cause to
58 believe has violated this section.