

By Mr. Constantino of Clinton, petition of William Constantino, Jr., relative to transferring the Division of Watershed Management to the Department of Environmental Affairs, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT TRANSFERRING THE DIVISION OF WATERSHED MANAGEMENT TO THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS.

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 21A of the General Laws is hereby
2 amended by adding at the end thereof the following 17 sections: —

3 Section 18. As used in this chapter, unless the context clearly
4 indicates otherwise, the following words and phrases shall have
5 the following meanings:

6 (a) "Advisory committee", the watershed system advisory
7 committee for the appropriate watershed system.

8 (b) "Authority", the Massachusetts Water Resources
9 Authority.

10 (c) "Bonds", any bonds, notes or other evidences of
11 indebtedness.

12 (d) "Division", division of watershed management.

13 (e) "Office", executive office of environmental affairs.

14 (f) "Quabbin watershed advisory committee", the committee
15 established by section one hundred and fourteen.

16 (g) "Revenues", all charges, reimbursements and other receipts
17 derived by the division from operation of the watershed system
18 and from all other activities or properties of the division including,
19 without limiting the generality of the foregoing, proceeds of
20 grants, gifts, investments, earnings and proceeds of insurance or
21 condemnation.

22 (h) "Watershed system", (i) all real and personal property
23 interests held by or on behalf of the commonwealth immediately

24 prior to the effective date of this act in and for the metropolitan
25 district commission water system which were part of or
26 appurtenant to the Quabbin watershed, Quabbin Reservoir, Ware
27 River watershed, Wachusett watershed, Wachusett Reservoir,
28 North and South Sudbury watersheds, Sudbury Reservoir,
29 Framingham Reservoirs 1, 2 and 3, Blue Hills Reservoir, Bear Hill
30 Reservoir, Spot Pond Reservoir, Fells Reservoir, Weston
31 Reservoir, Norumbega Reservoir, Chestnut Hill Reservoir,
32 including land, easements, buildings, structures, all equipment,
33 machinery, vehicles, and appliances, improvements, water rights
34 and rights in source of water supply and (ii) all enlargements and
35 additions to the former metropolitan district commission water
36 system acquired or constructed by the division for the purposes
37 of the watershed system, including land, easements, buildings,
38 structures, equipment, machinery, vehicles, and appliances,
39 improvements, reservoirs, dams, water rights and rights in sources
40 of water supply, but excluding the waterworks system of the
41 Authority.

42 Section 19. There shall be within the office a division of
43 watershed management which shall be subject to the provisions
44 of chapter seven hundred and thirty-seven of the acts of nineteen
45 hundred and seventy-two. The division shall construct, maintain
46 and operate a system of watersheds, reservoirs, water rights and
47 rights in sources of water supply, shall supply thereby a sufficient
48 supply of pure water to the Massachusetts Water Resources
49 Authority, and shall utilize and conserve said water and other
50 natural resources in order to protect, preserve and enhance the
51 environment of the commonwealth and to assure the availability
52 of pure water for future generations. The division shall maintain
53 a visitors' informational center at the Quabbin reservation.

54 Section 20. The division shall keep all bridges built by it across
55 the reservoir upon the Nashua river safe, and shall have charge
56 of, use, maintain and operate the same, and the commonwealth
57 shall be exclusively responsible for all damages caused thereby or
58 by any defect or want of repair therein. The office shall have the
59 exclusive right and control over all ponds, reservoirs and other
60 property within the watershed system, and may order all persons
61 to keep from entering in, upon or over the waters thereof and the
62 lands of the commonwealth or towns surrounding the same.

63 Section 21. The division shall have the exclusive right to and
64 interest in hydroelectricity developed, generated, transmitted,
65 distributed and sold as an incident to the operation of the
66 watershed and waterworks systems, may undertake such projects
67 for such purposes and may authorize or contract with any other
68 person otherwise lawfully qualified for such person to perform
69 on reasonable terms and conditions such activities on behalf of
70 or by arrangement with the division. The division may by lease,
71 license or permit or on its own behalf provide for the installation
72 and operation of electric and telecommunications transmission
73 facilities within said systems, provided that such facilities shall not
74 interfere with the proper operation of said systems and that no
75 lease, license or permit for such purpose shall be made for a term
76 of more than forty years. Subject to contractual requirements or
77 other legal obligations in force on the effective date of this act,
78 the division shall permit use of water in reservoirs for hydroelectric
79 generation only when and to the extent that water is otherwise
80 subject to release for reasons of sound management of the
81 reservoirs for watershed, waterworks and stream flow purposes.
82 All revenues derived from the activities authorized herein shall
83 annually be remitted by the division to the state treasurer who
84 shall deposit said revenues into the general fund.

85 Section 22. The department of environmental quality
86 engineering shall make rules and regulations for the sanitary
87 protection of the watershed system of the division. The division
88 shall cause such rules and regulations to be posted at or near the
89 waters to which they respectively apply, and shall also cause the
90 same to be published at least once in a newspaper published in
91 the county where said waters are in whole or in part situated, and
92 such posting and publication shall be sufficient notice to all
93 persons. The sworn certificate of any member of the commission
94 or of its secretary of such posting and publication, or of the posting
95 or publication of an order made by the commission, shall be prima
96 facie evidence thereof. A copy of any such rule, regulation or
97 order, attested by any member of the commission or by its
98 secretary, shall be prima facie evidence that said rule, regulation
99 or order was made by the department or by the commissioner,
100 as the case may be.

101 Section 23. No person shall take or divert any water of the
102 watershed system of the division, and no person shall corrupt,
103 render impure, waste or improperly use any such water.

104 Section 24. The office and its employees designated for the
105 purpose, shall enforce sections eighteen to twenty-three, inclusive,
106 and the rules, regulations and orders made thereunder, and may
107 enter into any building, and upon any land for the purpose of
108 ascertaining whether sources of pollution there exist, and whether
109 said sections and the rules, regulations and orders made as
110 aforesaid are complied with.

111 Section 25. Any person who without lawful authority takes or
112 diverts any water from any water supply within the watershed
113 system of the division, or who corrupts or defiles any such water
114 supply, or any source of such water supply, or who injures,
115 destroys or interferes with any property held or used by the
116 Authority for the purpose of constructing, operating or
117 maintaining the watershed system, or who violates or refuses to
118 comply with any rule, regulation or order of the office shall be
119 subject to a criminal fine of not more than fifty thousand dollars
120 or imprisonment for not more than one year; provided, however,
121 that in cases of continuing violation, such maximum fine may be
122 ten thousand dollars per day for each day such violation occurs
123 or continues. Notwithstanding any limitation on criminal
124 penalties set forth in the preceding sentence, any person convicted
125 of the wanton or malicious destruction of or injury to any property
126 used in the construction, operation or maintenance of the
127 watershed system shall also be liable in tort to the office for triple
128 the amount of damages thereby caused. Any such fine or tort
129 judgement shall be payable to the treasury of the commonwealth.

130 Section 26. The supreme judicial or superior court or any
131 justice of either court shall, on petition of the office or of any town
132 or person interested, have jurisdiction in equity or otherwise to
133 enforce sections one hundred and eighteen to one hundred and
134 twenty-five, inclusive, and any rule, regulation or order made
135 thereunder, and to prevent any violation of said sections, rules,
136 regulations or orders.

137 Section 27. The amount of fiscal year charges to the Authority
138 representing one-half of the amounts appropriated for the
139 division, debt service, the cost of capital improvements and other

140 authorized charges of the division, less one-half of the amount
141 of prior appropriations which may revert in accordance with law
142 less revenues received pursuant to section one hundred and
143 twenty-one and less one-half the amounts paid in said fiscal year
144 in trust by the Authority to the division for application to
145 payments in lieu of taxes to be made by the division, as provided
146 in chapter fifty-nine of the General Laws, shall be determined
147 annually by the comptroller as of the close of each fiscal year.
148 The comptroller shall certify to the state treasurer the amount of
149 such determination. The state treasurer shall in each year,
150 beginning with the portion of calendar year nineteen hundred and
151 eighty-five ending June thirtieth thereof, and each fiscal year
152 thereafter beginning with the fiscal year nineteen hundred and
153 eighty-six, assess to the Authority the amount of such
154 determination. All monies received under the provisions of this
155 section shall be paid into the state treasury.

156 Section 28. The office is hereby authorized and directed to
157 establish the Quabbin watershed advisory committee. The
158 purpose of the committee shall be to advise the division on its
159 policies and regulations regarding fishing, boating and other
160 recreational activities and environmental, wildlife and habitat
161 matters within the Quabbin watershed and the Ware river
162 watershed. The secretary shall appoint to said advisory committee
163 one person from three names nominated by each of the following
164 organizations: the Massachusetts Council of Sportsmen, the
165 Trout Unlimited, the Quabbin Fisherman's Association, the
166 Worcester County League of Sportsmen, the North Worcester
167 County Quabbin Anglers, the Massachusetts Audubon Society,
168 the Swift River Valley Historical Society, the Massachusetts
169 Wildlife Federation, the New England Sierra Club, and the
170 Friends of Quabbin, Inc.

171 The secretary shall also appoint one member from the general
172 public. The committee shall elect a chairperson from among its
173 members, shall meet at least twice each calendar year, and may
174 provide for alternate members to participate fully in its meetings
175 whenever a regular member is unable to do so.

176 Section 29. The secretary shall establish a watershed system
177 advisory committee to advise the division on its policies and
178 regulations regarding fishing, boating, and recreational activities
179 and other environmental and wildlife matters in all of the

180 watershed system areas under the control of the division, exclusive
181 of the Quabbin watershed and the Ware river watershed. The
182 committee shall consist of nine members, the qualifications of
183 whom shall be determined by regulation by the commissioner. The
184 committee shall elect a chairperson from among its members, shall
185 meet at least twice each calendar year, and may provide for
186 alternate members to participate fully in its meetings whenever
187 a regular member is unable to do so.

188 Section 30. The secretary shall at least once every five years,
189 adopt after public hearing one or more periodic watershed
190 management plans for the watershed system, which shall have
191 been prepared with the participation of a professionally qualified
192 forester and the appropriate watershed advisory committee. Any
193 watershed management plan shall provide for, but need not be
194 limited to, forestry, water yield enhancement and recreational
195 activities. All forestry activities shall be subject to sections forty
196 to forty-six, inclusive, of chapter one hundred and thirty-two of
197 the General Laws.

198 Section 31. The office, on behalf of the commonwealth, may
199 take by eminent domain under chapter seventy-nine, or acquire
200 by purchase or otherwise, lands in fee, easements, rights and other
201 property that it deems necessary or desirable for carrying out the
202 powers and duties conferred upon it by the provisions of this
203 chapter relative to the construction, maintenance and operation
204 of the watershed system.

205 Section 32. The division shall be deemed to be a public entity
206 under section twenty-six A of chapter twenty-one and shall be
207 eligible for grants and other assistance under the Massachusetts
208 Clean Water Act and other programs of federal or state assistance
209 for water supply, or related purposes.

210 Section 33. The office shall have over the property of the
211 watershed system all the general power and authority which it has
212 over reservations so far as the same may be exercised consistently
213 with the purposes for which the watershed system is maintained.

214 Section 34. The division shall not contract for services
215 exclusive of contracts pursuant to provisions of any general or
216 special act relating to forest cutting practices and for consultants
217 performing only those services for the division which regular
218 employees of the division are unable to perform, to accomplish

219 any of its duties nor shall it enter into any interagency agreement
220 for such purpose. Only officers and employees of the division shall
221 perform its duties.

1 SECTION 2. Sections one hundred and four to one hundred
2 and twenty of chapter ninety-two of the General Laws are hereby
3 repealed.

