

HOUSE No. 4172

The Commonwealth of Massachusetts

By Mr. Straus of Mattapoisett, for the committee on Environment, Natural Resources and Agriculture, on House, No. 736, a Bill safeguarding our natural resources (House, No. 4172).
July 23, 2009.

An Act SAFEGUARDING OUR NATURAL RESOURCES.

FOR THE COMMITTEE:

NAME:

William M. Straus

DISTRICT/ADDRESS:

10th Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act SAFEGUARDING OUR NATURAL RESOURCES.

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 131 of the Massachusetts General Laws is hereby amended by striking
2 Section 80A in its entirety and inserting in place thereof the following:-

3 Section 80A. Notwithstanding any other provision of this chapter, a person shall not use, set, place,
4 maintain, manufacture or possess any trap for the purpose of capturing furbearing mammals, except for
5 common type mouse and rat traps, nets, and box or cage type traps, as otherwise permitted by law. A box
6 or cage type trap is one that confines the whole animal without grasping any part of the animal, including
7 Hancock or Bailey's type live trap for beavers. Other than nets and common type mouse or rat traps, traps
8 designed to capture and hold a furbearing mammal by gripping the mammal's body, or body part are
9 prohibited, including steel jaw leghold traps, padded leghold traps, and snares.

10 The above provision shall not apply to the use of prohibited devices by federal and state departments of
11 health or municipal boards of health for the purpose of protection from threats to human health and safety.
12 A threat to human health and safety may include, but shall not be limited to:

13 (a) beaver or muskrat occupancy of a public water supply;

14 (b) beaver or muskrat-caused flooding of drinking water wells, well fields or water pumping stations;

15 (c) beaver or muskrat-caused flooding of sewage beds, septic systems or sewage pumping stations;

16 (d) beaver or muskrat-caused flooding of a public or private way, driveway, railway or airport runway or
17 taxi-way;

18 (e) beaver or muskrat-caused flooding of electrical or gas generation plants or transmission or distribution
19 structures or facilities, telephone or other communications facilities or other public utilities;

20 (f) beaver or muskrat-caused flooding affecting the public use of hospitals, emergency clinics, nursing
21 homes, homes for the elderly or fire stations;

22 (g) beaver or muskrat-caused flooding affecting hazardous waste sites or facilities, incineration or
23 resource recovery plants or other structures or facilities whereby flooding may result in the release or
24 escape of hazardous or noxious materials or substances;

25 (h) the gnawing, chewing, entering, or damage to electrical or gas generation, transmission or distribution
26 equipment, cables, alarm systems or facilities by any beaver or muskrat;

27 (i) beaver or muskrat-caused flooding or structural instability on property owned by the applicant if such
28 animal problem poses an imminent threat of substantial property damage or income loss, which shall be
29 limited to: (1) flooding of residential, commercial, industrial or commercial buildings or facilities; (2)
30 flooding of or access to commercial agricultural lands which prevents normal agricultural practices from
31 being conducted on such lands; (3) reduction in the production of an agricultural crop caused by flooding
32 or compromised structural stability of commercial agricultural lands; (4) flooding of residential lands in
33 which the municipal board of health, its chair or agent or the state or federal department of health has
34 determined a threat to human health and safety exists. The department of environmental protection shall
35 make any determination of a threat to a public water supply.

36 An applicant or his duly authorized agent may apply to the municipal board of health for an emergency
37 permit to immediately alleviate a threat to human health and safety, as defined in the previous paragraph.
38 If the municipal board of health determines that such a threat exists, it shall immediately issue said
39 emergency permit to alleviate the existing threat to human health and safety, for a period not exceeding
40 ten days. If no response is provided by the municipal board of health within ten calendar days or the
41 application is denied, the applicant or his duly authorized agent may transfer the application for said
42 emergency permit application to the Division of Fisheries and Wildlife or director. If the Division of
43 Fisheries and Wildlife or director determines that such a threat exists, it shall immediately issue said
44 emergency permit to alleviate the existing threat to human health and safety, for a period not exceeding
45 ten days.

46

47 The aforementioned emergency permit authorizes the applicant or his duly authorized agent to
48 immediately remedy the threat to human health and safety by one or more of the following options: (a)
49 the use of conibear or box or cage-type traps, subject to the regulations promulgated by the Division of
50 Fisheries and Wildlife; (b) the breaching of dams, dikes, bogs or berms, so-called, subject to
51 determinations and conditions of municipal conservation commissions under section 40; and (c)
52 employing any nonlethal management or water-flow devices, subject to determinations and conditions of
53 municipal conservation commissions under section 40.

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55 If said threat to human health and safety has not been alleviated within said ten days, the applicant or his
56 duly authorized agent shall apply to the granting authority for an extension permit to continue the use of
57 alleviation techniques, specified in this section, for a period not exceeding 30 days. If the granting
58 authority determines that such a threat to human health or safety exists, as defined in this section, the
59 authority shall immediately issue an extension permit.

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61 If the Division of Fisheries and Wildlife determines that said extension permit should be continued for 30
62 days, the Division of Fisheries and Wildlife shall within 30 days of such decision develop, with the
63 assistance of the applicant or his duly authorized agent, municipal board of health and municipal
64 conservation commission, a plan to abate the beaver or muskrat problem using alternative, nonlethal
65 management techniques in combination with water-flow devices, where possible, subject to the
66 determinations and conditions of municipal conservation commissions under section 40, and if necessary,
67 box and cage type-traps in order to provide a long-term solution. The director shall take reasonable steps
68 to implement the plan within this 30-day period.

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70 Compliance with the provisions of any or all of this section shall not preclude the applicant or his duly
71 authorized agent from applying to the municipal board of health or Division of Fisheries and Wildlife for
72 an additional emergency permit, provided the applicant (a) states in writing that there exists on the
73 property an animal problem which poses a threat to human health and safety, as defined in this section,
74 which cannot reasonably be abated by the use of alternative, nonlethal management techniques or box or
75 cage traps, and that the applicant has attempted to abate the animal problem using alternative, nonlethal
76 management techniques or box or cage traps, or (b) is awaiting the Division of Fisheries and Wildlife's
77 approval for an extension permit.

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79 Each and every board of health within the Commonwealth which issues an emergency permit pursuant to
80 this section shall report annually to the Division of Fisheries and Wildlife the number of permit
81 applications, the number of permits granted, location for which the emergency permits were authorized,
82 results from the emergency permits, and other information which may be required by the Division of
83 Fisheries and Wildlife. The Division of Fisheries and Wildlife shall provide a report annually to the joint
84 committee on environment, natural resources, and agriculture on the aggregation of boards of health
85 reports, the number of permit applications it received, the number of permits it granted, location for which
86 the emergency permits were authorized, results from the emergency permits, and recommendations
87 regarding wildlife management pursuant to this section.

88 A person or his duly authorized agent may apply to the director of the Division of Fisheries and Wildlife
89 for a special permit to use otherwise prohibited traps on property owned by such person. Issuance of such
90 special permits shall be governed by rules and regulations adopted by the director pursuant to chapter
91 30A. Such rules and regulations shall include, but not be limited to, provisions relative to the following:

92 The applicant shall apply to the director in writing and shall state that there exists on the property an
93 animal problem which cannot be reasonably abated by the use of traps other than those prohibited by this
94 section, and that the applicant has attempted to abate the problem using traps permitted under this section.
95 If the director determines that the applicant has complied with sections 37 and 80, if required to do so,
96 and any other laws regarding trapping, and that such an animal problem exists which cannot reasonably
97 be abated by the use of alternative, nonlethal management techniques or traps other than those prohibited
98 by this section, the director may authorize the use, setting, placing or maintenance of such traps, not
99 including leghold traps, for a period not exceeding 30 days during which time the applicant shall remain
100 in compliance with the procedures for obtaining a special permit as set forth in regulations adopted
101 pursuant to this section.

102 Whoever violates any provisions of this section, or any rule or regulation made under the authority
103 thereof, shall be punished by a fine of not less than \$300 nor more than \$1,000, or by imprisonment for
104 not more than six months, or by both such fine and imprisonment for each trap possessed, used, set,
105 placed, maintained, or manufactured. Each day of violation shall constitute a separate offense. A person
106 found guilty of, or convicted of, or assessed in any manner after a plea of nolo contendere, or penalized
107 for, a second violation of this section shall surrender to an officer authorized to enforce this chapter any
108 trapping license and problem animal control permit issued to such person and shall be barred forever from
109 obtaining a trapping license and a problem animal control permit.