ATTACHMENT T

July 28, 2022

To the Honorable Senate and House of Representatives,

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 137 of House Bill No. 5050, “An Act Making Appropriations for the Fiscal Year 2023 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.”

Many communities in the Commonwealth face environmental challenges stemming from nutrient contamination in their waterbodies. Coastal estuaries in the southeast portion of the state in particular have been impacted by excessive nitrogen pollution from septic systems, wastewater treatment plants, lawns, and stormwater, which leach into the groundwater and into surface water bodies. Eutrophication of these estuaries accelerates the growth of nuisance plants, forces out fish and indigenous plant species, and results in water bodies that violate state water quality standards. Upgrading septic systems, the largest source of nitrogen discharges to surface water bodies, would help address these issues.

Section 137 seeks to provide a mechanism for upgrades, recognizing that existing loan programs support homeowner upgrades of septic systems only if the system has failed. Upgrades and repairs to address nitrogen pollution stemming from a system that has not otherwise failed are not currently eligible for loans. While I agree with the goals of Section 137, the relevant executive branch agencies have identified where the language can be improved to clarify its intent and more effectively implement these goals.

Accordingly, I hereby recommend that the bill be amended by striking out Section 137 and inserting in place thereof the following section:-

SECTION 137. (a) For the purposes of this section a domestic septic system means any properly functioning septic system that is approved for the intended domestic use pursuant to title 5 of the state environmental code established in 310 CMR 15.000; provided further that an “enhanced nitrogen removal technology” means an enhanced nitrogen removal alternative technology approved by the department of environmental protection in accordance with title 5 of the state environmental code established in 310 CMR 15.000.

(b) Notwithstanding chapter 29C of the General Laws or any other general or special law to the contrary, to reduce environmental impacts of nitrogen pollution in vulnerable communities, a local or regional board of health may enter into agreements with residential owners to provide for the repair, replacement or upgrade of certain septic systems pursuant to subsections (c) and (d).

(c)(1) When an existing domestic septic system does not incorporate enhanced nitrogen removal technology, or utilizes a nitrogen removal technology that does not achieve the nitrogen level established by a rule or regulation of the local or regional board of health or the city or town, a local or regional board of health may enter into an agreement with the residential owner pursuant to section 127B½ of chapter 111 of the General Laws to finance by loan the repair, replacement or upgrade of the system to incorporate enhanced nitrogen removal technology.

(2) To qualify for such loan assistance, a domestic septic system shall be located within: (i) a watershed area of a nitrogen impaired water body as identified in the latest United States Environmental Protection Agency approved final listing of the latest state Integrated List of Waters for the commonwealth; (ii) a nitrogen sensitive area as defined in 310 CMR 15.000; or (iii) a watershed area of a water body subject to the latest state established total maximum daily load for total nitrogen pollution that is approved by the United States Environmental Protection Agency.

(3) The repair, replacement or upgrade, including installation, of a shared domestic septic system that treats for nitrogen located in an area described in paragraph (2) may qualify for such loan assistance; provided, that the: (i) shared system replaces or services at least 2 existing domestic septic systems that otherwise do not incorporate enhanced nitrogen removal technology; and (ii) the combined shared septic system, including its components, has a discharge volume of less than 10,000 gallons per day and incorporates enhanced nitrogen removal technology. For loan assistance pursuant to paragraph (1), each affected residential owner benefiting directly from the shared system shall enter into an agreement with the local or regional board of health in the city or town where such system is located for the repayment of the owner’s proportionate share of the costs and expenses incurred by the local or regional board of health for the repair, replacement or upgrade of any part of the shared system.

(d) Notwithstanding any general or special law to the contrary, a local or regional board of health may enter into an agreement for loan assistance with a residential owner to promote the voluntary upgrade or replacement of the owner’s functioning domestic septic system to incorporate advanced nitrogen removal technology.

Respectfully submitted,

Charles D. Baker

Governor