

# Mosquito Control for the Twenty- First Century Task Force

## An overview of the Current Policy Structure of Mosquito Control in the Commonwealth for the MCTF Subcommittee on Control Policy Structure

Jessica H. Burgess, Esq.

General Counsel, State Reclamation and Mosquito Control Board

Legal Counsel, Massachusetts Department of Agricultural Resources



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# Current Mosquito Control Policy in Massachusetts

- Massachusetts General Laws (M.G.L.) Chapter 252
- Special Enabling Legislation
- Chapter 120 of the Acts of 2020

# General Overview of M.G.L. c. 252

- General Overview
  - Enacted in 1918
    - Most sections have never been updated.
    - Does not reflect changes to how county and municipal governments operate.
  - Created the State Reclamation and Mosquito Control Board and the oversight mechanisms for mosquito control in the Commonwealth.
  
- Activities still subject to other applicable laws and regulations unless otherwise exempt or specifically addressed.
  - Examples:
    - Exemption under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, Section 40
    - Specific provisions related to mosquito control operations in pesticide regulations (333 CMR 2.00 through 14.00)

# General Overview of M.G.L. c. 252

- State Reclamation and Mosquito Control Board (“SRB”)
  - Authority to conduct improvements and create districts.
  - Certify budgets for the Massachusetts Department of Revenue (“DOR”) to make necessary cherry sheet deductions.
  - Appoint and remove MCD commissioners.
  - Establish administrative and technical policy, guidelines, and best management practices to ensure operations are conducted in accordance with applicable laws.
  - Establish conditions under which mosquito control work may be performed.
  - Sits within the Department of Agricultural Resources (“MDAR”)
  
- Mosquito Control Districts and Projects Commissioners
  - Appointed and removed by the SRB
  - Represents local interests including member communities and oversees the MCD
  - Responsible for hiring a Superintendent or Director to carry out the day-to-day operations and all staff of the MCD
  
- Mosquito Control Districts and Projects (“MCDs”)
  - Operates under the authority of the SRB and the oversight of its commissioners and are considered state entities.
  - MCDs operate independent of each other but coordinate and collaborate frequently.

# Key Provisions of M.G.L. c. 252

## ➤ Section 1

- Allows for the following:
  - Drain or flow a meadow, swamp, marsh, beach or other low land held by two or more proprietors;
  - Remove obstructions in rivers or streams leading thereto or therefrom; and
  - Eradicate mosquitoes in any area infested thereby, including, in respect to each such purpose, purposes incidental thereto.

## ➤ Section 2: State Reclamation and Mosquito Control Board (“SRB”)

- 3 members
  - Employee of the Department of Environmental Protection (“DEP”)
  - Employee of MDAR (currently serves as chair)
  - Employee of the Department of Conservation and Recreation (“DCR”) (formerly environmental management)
- Sits within MDAR
- Funded through assessments to MCDs, legislative appropriations

# Key Provisions of M.G.L. c. 252

## ➤ Section 2A

- Created by Chapter 120 of the Acts of 2020
- Expressly authorizes the SRB to engage in preventative, management and eradication methods it deems necessary anywhere in MA.
- Formalized DPH's role in arbovirus risk determinations.
  - Requires a written determination from DPH of an elevated risk for the current or next year.
- SRB can act through any MCD, other state agency, or hire professionals as needed.
- Allows for private property owner and municipal opt outs through 2 different processes.
- Notice requirements for certain aerial and wide-area emergency response methods of treatment.
- Any action must be designed to protect public health while minimizing, to the extent feasible, any adverse impact to the environment.
- Will be repealed on December 31, 2022

## ➤ Section 3

- Authorizes the SRB to investigate and drain certain wetlands for agricultural or industrial uses, the protection of the public health, the utilization of deposits therein, or for other purposes.
- Includes certain reporting requirements if such action is taken.

# Key Provisions of M.G.L. c. 252

## ➤ Section 4

- Authorizes SRB to hire individuals and enter land.
- Can incur necessary expenses.

## ➤ Section 4A

- Authorizes state agencies and municipalities to undertake improvements for the purposes of public health, safety or convenience and be treated similarly to individual property owners under the sections of M.G.L. c. 252.
- Action under this section does not constitute the creation of a district.
- Contains petition, notice, and hearing requirements.
- Authorizes municipalities to appropriate and expend funds.

# Key Provisions of M.G.L. c. 252

## ➤ Section 5

- Allows for petition by property owners to the SRB for improvements.
- Requires petitioner to identify funds and pay for any improvements.
- Authorizes the SRB to organize a district and appoint commissioners as needed to perform and maintain improvements.
- Authorizes SRB to remove commissioners for cause and fill vacancies.



# Key Provisions of M.G.L. c. 252

## ➤ Section 5A

- Authorizes SRB to perform work without forming a district.
- Establishes funding by members, trust accounts, and role of the Department of Revenue (“DOR”) to assess costs to members.
- Allows SRB to incur costs for salaries and other costs of state employees, operational expenses, acquisition of capital equipment and property, and other necessary expenses and assess costs to MCDs or non-member community where work is performed.
- Requires the SRB to annually certify all MCD budgets for DOR.
- Allows any non-member municipality that is included in an area designated as a MCD to vote to join, subject to SRB approval.

# Key Provisions of M.G.L. c. 252

## ➤ Section 5B

- Authorizes a board of health in a municipality not included in a MCD to determine any area infested by mosquitoes, or likely to produce mosquitoes to be a public nuisance,
- Board of Health may require owner, occupant or person in charge of such area to abate the nuisance. Requires written notice of the presence of such nuisance, directions to abate, methods of treatment, time to perform the work.
- Board of Health may perform the work necessary, hire others, or delegate authority, and has right to enter the private property to perform any work.
- SRB must be notified.
- An annual report must be filed with the SRB.

# Key Provisions of M.G.L. c. 252

- Section 6A
  - Allows MCDs to obtain and hold liability insurance.
  
- Section 8
  - Allows state to contribute to costs of improvements made to protect public health.
  
- Sections 9 through 11
  - Identify funding options for MCDs created by the SRB.
  - Allow for voluntary contributions made by members, ability to incur debt, hold loans, notes, bonds.
  - Established when county structure of governments were in place.

# Key Provisions of M.G.L. c. 252

## ➤ Section 12

- Authorizes commissioners to carry out improvements in manners approved by the SRB.
- Commissioners can hire individuals, purchase and convey property.
- Limits liability and damages.

## ➤ Section 13

- Authorizes commissioners to perform work associated with raising and lower waters, opening or constructing dams.
- Requires notice and opportunity to appeal.

# Key Provisions of M.G.L. c. 252

- Section 14
  - Requires MCDs to submit invoices to SRB for review and approval on a monthly basis.
- Section 14D
  - Gives sole authority in all personnel decisions including, but not limited to, the following:
    - Hiring and firing of personnel;
    - Establishing rates of compensation for personnel representative of the regional economy; and
    - Hiring of appropriate outside professionals deemed necessary to carry out and fulfill statutory obligations.
- Sections 15 through 23
  - General provisions not applicable to MCD activities (taking authority, roadways, fees, damages, petitions to municipalities).
- Section 24
  - Authorizes the establishment of greenhead fly control projects
  - Can exist under MCDs, funded separately, membership can be limited to greenhead fly control operations.

# Special Enabling Legislation

- Most MCDs were created initially by special enabling legislation
  - Berkshire County Mosquito Control Project (1945)
  - Bristol County Mosquito Control Project (1956)
  - Cape Cod Mosquito Control Project (1930)
  - Central Massachusetts Mosquito Control Project (1973)
  - Dukes County (1957)
  - Northeast Massachusetts Mosquito Control and Wetlands Management District (formerly Essex) (1958)
  - Plymouth County Mosquito Control Project (1957)
  - Norfolk County Mosquito Control Project (1956)
  - Suffolk County Mosquito Control Project (1973)

# Special Enabling Legislation

- East Middlesex and Pioneer Valley established by the SRB under M.G.L. c. 252
- Almost every area of the Commonwealth has a MCD that could provide services to a municipality if it joined.
  - Exception is Nantucket (legislation was repealed in 2018)
  - 228 municipalities belong to a MCD (as of 9/1/21)
- Each enabling legislation has been amended several times.

# Special Enabling Legislation

- Enabling legislation addresses the following:
  - Funding
  - Commissioners
  - Membership
    - Joining and Withdrawal mechanism
    - Minimum terms of membership
  - SRB Role



# Special Enabling Legislation

## ➤ Funding

- Establishes general funding mechanism through land valuation assessments.
- Does not give municipality discretion over the amount assessed.
- Allows for voluntary contributions.
- Establishes trust account

## ➤ Commissioners

- Establishes the number of commissioners (generally 5)
- Subject to SRB appointment and removal
- Identifies any applicable requirements for appointment

# Special Enabling Legislation

## ➤ Membership

- Identifies either county, land area, or municipalities eligible for membership.
  - County based unless otherwise noted (Central, Suffolk)
- Identifies method to join and withdraw, any time limits associated with membership.

## ➤ SRB Role

- All created as if constituted by the SRB under M.G.L. c. 252, Section 5A.
- All MCDs subject to SRB oversight and applicable provisions of M.G.L. c. 252.
- Oversee budgets, expenses, operations, and commissioners.

# Chapter 120 of the Acts of 2020

- Signed by the Governor on July 20, 2020
- Amended M.G.L. c. 252 to add Section 2A
  - Will be repealed on December 31, 2022
- Created the Mosquito Control for the Twenty-First Century Task Force