HOUSE DOCKET, NO. 672 FILED ON: 1/18/2011

HOUSE . . . . . No. 466

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

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:

An Act to limit the liability of the MWRA..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Ronald Mariano	*3rd Norfolk*

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HOUSE . . . . . No. 466

By Mr. Mariano of Quincy, a petition (accompanied by bill, House, No. 466) of Ronald Mariano relative to the liability of the Massachusetts Water Resources Authority for negligent or wrongful acts or omissions of any employee of said authority. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1522* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act to limit the liability of the MWRA..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 372 of the acts of 1984 is hereby amended by inserting after section 72 the following section: -

Section 1 - 31. The Authority shall be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any Authority employee while acting within the scope of his office or employment, including liability from the date suit is commenced and for post-judgment interest. An "employee" of the Authority shall include elected or appointed officers, directors or employees of the Authority, whether serving full or part-time, temporary or permanent, compensated or uncompensated, and members of its advisory board and advisory committee and their staff.

The Authority shall not be liable to levy execution on any real or personal property to satisfy judgment, and shall not be liable for punitive damages or for any amount in excess of one hundred thousand dollars, exclusive of interest and costs, to each plaintiff. Interest shall be calculated pursuant to the provisions of paragraph five of this section. This section shall not apply to the Authority's eminent domain powers.

No Authority employee or the estate of such employee shall be liable for any injury or loss of property or personal injury or death caused by his negligent or wrongful act or omission while acting within the scope of his office or employment; provided, however, that such

18 employee shall provide reasonable cooperation to the Authority in the defense of any action
19 brought under this chapter. Failure to provide such reasonable cooperation on the part of such
20 employee shall cause the employee to be jointly liable with the Authority, to the extent the
21 failure to provide reasonable cooperation prejudiced the defense of the action.

22 Information obtained may not be used as evidence in any disciplinary action against the
23 employee. Final judgment in an action brought against the Authority shall constitute a complete
24 bar to any action by a party to such judgment against the Authority or the Authority's employee
25 by reason of the same subject matter.

26 Notwithstanding that such employee shall not be liable for negligent or wrongful acts as
27 described in the preceding paragraph, if a cause of action is improperly commenced against the
28 Authority alleging injury or loss of property or personal injury or death as the result of the
29 negligent or wrongful act or omission of such employee, such employee may request
30 representation by the public attorney of the commonwealth. The public attorney shall defend the
31 employee with respect to the cause of action at no cost to the employee; provided, however, that
32 the public attorney determines that the employee was acting within the scope of his office or
33 employment at the time of the alleged loss, injury, or death, and, further, that said employee
34 provides reasonable cooperation to the Authority and public attorney in the defense of any action
35 arising out of the same subject matter. If, in the opinion of the public attorney, representation of
36 the employee, under this paragraph would result in a conflict of interest, the public attorney shall
37 not be required to represent the Public employee. Under said circumstances, the Authority shall
38 reimburse the employee for reasonable attorney fees incurred by the employee in his defense of
39 the cause of action; provided, however, that the same conditions exist which are required for
40 representation of said employee by the public attorney under this paragraph.

41 Interest required to be paid under this chapter shall be calculated at an annual rate equal
42 to the coupon issue yield equivalent, as determined by the United States secretary of the treasury,
43 of the average accepted auction price for the last auction of 52 week United States treasury bills
44 settled immediately prior to the date of the judgement. The Secretary of Administration and
45 Finance shall maintain a schedule of the rate described above. This section shall also apply to
46 the South Essex Sewerage District.