HOUSE DOCKET, NO. 3014 FILED ON: 1/18/2013

HOUSE . . . . . No. 721

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

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 valuing our natural resources.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Anne M. Gobi	*5th Worcester*

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HOUSE . . . . . No. 721

By Ms. Gobi of Spencer, a petition (accompanied by bill, House, No. 721) of Anne M. Gobi for legislation to further regulate the capturing of furbearing animals. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

An Act valuing 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:

SECTION 1. Chapter 131 of the General Laws is hereby amended by striking out section 80A as so appearing in the 2010 official edition, and inserting in place thereof the following section:-

Section 80A. (a) In this section, the following words shall have the following meanings, unless the context requires otherwise:-

"Applicant" shall mean the applicant or the applicant's duly authorized agent.

"Commissioner", the commissioner of the department of public health.

"Department of public health" or "department", the department of public health established pursuant to section 1 of chapter 17.

"Municipal board of health", "board of health" or "board", the board of health or health department, in a city or town and its authorized officers; or, other board, district or officer having like powers of a board of health, including without limitation a health officer of a district formed by 2 or more municipalities, regional health district consisting of a regional board of health of 2 or more municipalities.

"Person", an individual, association, organization, corporation; the commonwealth, its divisions, agencies, public or quasi-public, or political subdivisions; other legal entity or respective agents.

(b) No person shall use, set, place or maintain any trap for the purpose of capturing furbearing mammals, except for common type mouse and rat traps, nets, box or cage type traps, as otherwise permitted by law. A box or cage type trap is one that confines the whole animal without grasping any part of the animal, including Hancock or Bailey's type traps for beavers.

Other than nets, common type mouse or rat traps, traps designed to capture and hold a furbearing mammal by gripping only a part of the mammal's body shall be prohibited, including, steel jaw leghold traps, padded leghold traps and snares.

The above provision shall not apply to the use of prohibited trap devices by the department of public health, boards of health and other persons as authorized under this section, for the purpose to protect from threats to public health and safety posed by furbearing mammals, A threat to public health and safety may include without limitation:

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

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

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

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

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

(6) beaver or muskrat-caused flooding affecting the public use of hospitals, emergency clinics, nursing homes, homes for the elderly, schools, fire stations, or other public safety facilities;

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

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

(9) beaver or muskrat-caused flooding or structural instability on property owned or leased by the applicant if such animal problem poses an imminent threat of substantial property damage or income loss, which shall be limited to such resulting flooding or instability of: (i) residential, industrial or commercial buildings or facilities; (ii) commercial agricultural lands or means of access, that prevents normal agricultural practices from being conducted on such lands; (iii) commercial agricultural lands that may cause or causes a reduction in agricultural production; and (iv) residential lands in which the board of health, department of public health,

56 or a federal health department or agency has determined a threat to public health and safety
57 exists.

58 Any such threat to a public water supply shall be determined by the department of
59 environmental protection.

60 (c) A board of health shall be authorized to issue an emergency permit to immediately
61 alleviate a threat to public health and safety posed by a furbearing mammal. A person requesting
62 a permit shall apply in writing to the board of health of the local jurisdiction where the animal
63 problem is located. Upon receipt of an application, the board shall make a determination within
64 10 days whether to grant or deny the requested permit. If the board determines that such threat
65 exists, it shall immediately issue said permit, for a period not exceeding 10 days. If the permit is
66 denied, the board shall immediately send to the applicant a written notice of the reason for the
67 denial with information on the procedure to appeal the adverse determination.

68 Alternatively, a board may transfer the application to the department where the board
69 determines that the animal problem is occurring in the local municipality and 1 or more adjacent
70 municipalities. Transfer of an application shall be made within 10 days of its receipt. Upon
71 transfer, the board shall immediately send written notice to the applicant of the transfer. The
72 department upon receiving the transferred application shall within 14 days, review and make a
73 determination whether to issue an emergency permit. If the department determines that a threat
74 to public health and safety posed by furbearing mammals exists, it shall immediately, issue an
75 emergency permit to the applicant for a period not exceeding 10 days; or alternatively, direct 1 or
76 more, boards of health to issue said permit for such period, which a board as directed shall
77 immediately issue. If the permit is denied, the department shall immediately send to the applicant
78 a written notice of the reasons for the denial with information on the procedure to request a
79 hearing.

80 Within 10 days after the denial decision, an applicant may apply in writing to request a
81 hearing and reconsideration by the department. Upon such request, the department shall without
82 undue delay, conduct a hearing and within 14 days thereafter, make a determination. Such
83 determination with the issuance of any emergency permit shall be made in the same manner as
84 set forth in the prior paragraph; except, no further administrative appeal shall be permitted.

85 (d) If a permit is denied or no determination is rendered within the prescribed period by a
86 board under subsection (c), the applicant may appeal to the department; provided, a completed
87 appeal application is filed with the department within 20 days from the date the applicant applied
88 to the board for the permit. Upon receipt of the application, the department shall within 14 days,
89 review and decide the appeal. If the department determines that such threat exists, it shall
90 immediately, issue an emergency permit to the applicant for a period not exceeding 10 days; or
91 alternatively, direct the board to issue said permit for such period, which the board as directed
92 shall immediately issue. If the appeal is denied, the department shall immediately send to the

93 applicant a written notice of the reason of the denial with information on the procedure to request
94 a hearing and reconsideration by the department.

95 Within 10 days after such denial notice issued an applicant may make a written request to
96 the department for a hearing and reconsideration. The department upon receipt of the request,
97 shall without undue delay conduct a hearing and within 14 days thereafter, issue a determination.
98 Such determination with the issuance of any emergency permit shall be issued in the same
99 manner as set forth in the prior paragraph; except, no further administrative appeal shall be
100 permitted.

101 Notwithstanding, where a board of health has denied an emergency permit to abate a
102 beaver or muskrat problem solely that the determined threat to public health and safety is not
103 caused by beaver or muskrat, the department prior to rendering an appeal decision shall consult
104 with the division.

105 (e) An emergency permit so issued shall authorize the applicant to immediately remedy
106 the threat to public health and safety by 1 or more of the following alleviation techniques as
107 specifically authorized on the permit: (i) the use of conibear or box or cage-type traps, subject to
108 the regulations promulgated by the division; (ii) the breaching of dams, dikes, bogs or berms, so-
109 called, subject to determinations and conditions of municipal conservation commissions under
110 section 40; and (iii) employing any nonlethal management or water-flow devices, subject to
111 determinations and conditions of municipal conservation commissions under section 40.

112 If the threat to public health and safety has not been alleviated within 10 days, the
113 applicant in conjunction with the board of health shall first apply to the director for an extension
114 permit to continue the use of alleviation techniques, as specified in this section, for a period not
115 exceeding 30 days. If the director after consulting with the department determines that the threat
116 to public health or safety exists as defined in this section, the director shall immediately issue an
117 extension permit. In the event the extension permit is denied, the director shall immediately send
118 to the applicant written notice of the reasons for the denial with information on the process to
119 request a hearing. An applicant may within 10 days after such denial, apply in writing to request
120 a hearing and reconsideration by the director. Upon such request, the director shall without
121 undue delay conduct a hearing and, within 10 days thereafter, make a determination. If such
122 threat is determined to exist after hearing and reconsideration, the director shall immediately
123 issue an extension permit for said period; or if the permit is denied, the director shall
124 immediately send to the applicant a written notice of the reasons for the denial.

125 If the director determines after consulting with the department that the issued extension
126 permit should be continued for 30 days the director shall within 30 days of such decision
127 develop, with the assistance of the applicant, board of health and the local municipal
128 conservation commission a plan to abate the beaver or muskrat problem using alternative,
129 nonlethal management techniques in combination with water-flow devices, where possible,

130 subject to the determinations and conditions of the local municipal conservation commissions
131 under section 40, and if necessary, box and cage type-traps in order to provide a long-term
132 solution. The director shall take reasonable steps to implement the plan within this 30-day
133 period.

134

135 Compliance with the provisions of any or all of the provisions, under the previous
136 paragraphs of this subsection, or subsections (c) or (d), shall not preclude the applicant from
137 applying to the board of health for an additional emergency permit, provided the applicant: (i)
138 states in writing that there exists on the property an animal problem which poses a threat to
139 public health and safety, as defined in this section, which cannot reasonably be abated by the use
140 of alternative, nonlethal management techniques or box or cage traps, and that the applicant has
141 attempted to abate the animal problem using alternative, nonlethal management techniques or
142 box or cage traps, or (ii) is awaiting the director's approval for an extension permit.

143 An applicant, awaiting such director's approval shall be eligible for only 2 additional
144 emergency permits, the first of which shall entitle the applicant the use of all or any of the
145 alleviation techniques previously allowed under the initial emergency permit. Said first
146 additional emergency permit shall expire in 10 days. If the director still has not acted within this
147 10 day period, the applicant shall be eligible for a second additional emergency permit. Said
148 second additional emergency permit shall entitle the applicant the use of all alleviation
149 techniques previously allowed in this section, except for the use of conibear traps. The second
150 additional emergency permit shall expire on the rendering of a decision by the director regarding
151 the extension permit.

152 The division shall provide a written report annually to the joint committee on the
153 environment. natural resources and agriculture, on the creation, implementation and efficiency of
154 such animal problem plans.

155 (f) An applicant issued an emergency or extension permit under this section, shall no later
156 than 10 days after the expiration of such permit, unless an earlier period is established by other
157 law or regulation, make a written trapping report to the authority issuing such permit. Such
158 report shall be in a form and contain the information as prescribed by the department to include,
159 the type of permit issued; permit dates; authority issuing the permit; animal problem; property
160 location for which the permit issued; alleviation techniques or methods utilized at each location;
161 species and number of animals, if any, captured or taken at each location and any other
162 information as may be required by the department. Notwithstanding, an authority issuing a
163 permit under this section, may impose reasonable reporting requirements of a different time or
164 interval, which shall be conspicuously stated on the issued permit; provided, such date is no later
165 than 10 days after the expiration of the permit or other applicable date as required under other
166 law or applicable regulation.

167 (g) A person may apply to the director for a special permit to use otherwise prohibited
168 traps on property owned by such person. Issuance of such special permits shall be governed by
169 regulations adopted by the director under chapter 30A. Such regulations shall include, but not
170 limited to, provisions relative to the following:

171 The applicant shall apply to the director in writing and shall state that there exists on the
172 property an animal problem which cannot be reasonably abated by the use of traps other than
173 those prohibited by this section, and that the applicant has attempted to abate the problem using
174 traps permitted under this section. If the director after consulting the department of public heath,
175 determines that the applicant has complied with sections 37 and 80, if required to do so, and any
176 other laws regarding trapping, and that such an animal problem exists which cannot reasonably
177 be abated by the use of alternative, nonlethal management techniques or traps other than those
178 prohibited by this section, the director may authorize the use, setting, placing or maintenance of
179 such traps, not including leghold traps, for a period not exceeding 30 days during which time the
180 applicant shall remain in compliance with the procedures for obtaining a special permit as set
181 forth in regulations adopted pursuant to this section. If the requested special permit is denied in
182 any part, the director shall immediately send to the applicant written notice with the reasons for
183 the denial with information on the procedure to request a hearing before the division. An
184 applicant may within 10 days after such denial apply in writing to request a hearing and
185 reconsideration by the division. Upon receipt of such request, the division without undue delay
186 shall conduct a hearing and within 30 days thereafter, shall render a determination on such
187 requested permit. If after consulting with the department, the director decides to issue a special
188 permit or amend a permit that was issued, such permit or amended permit shall be issued
189 immediately on such terms and conditions as the director shall determine, consistent with the
190 provisions of this section and any regulations related to special permits. If after such hearing the
191 permit is denied in any part, the director shall immediately send to the applicant a written notice
192 of the reasons for the denial. No later than 10 days after the expiration of an issued special
193 permit, the applicant shall file a trapping report with the division, in a form prescribed by the
194 division of similar nature as set forth in subsection (f).

195 (h) The department and division shall promulgate respective regulations necessary for
196 the administration of this section, including without limitation, a uniform permitting process for
197 emergency and extension permits requiring the use of standardized forms for applications,
198 appeals, notices, permits, reports. Such regulations and standardize forms to be used by permit
199 applicants shall be displayed on each agency's public internet website in a user printable format.

200 The commissioner in consultation with the director shall by regulation establish
201 administrative procedures for boards of health related to the administration of emergency
202 permits; and, the transmittal to the department of such administrative information and of trapping
203 reports received from applicants.

204 The division and department shall develop procedures for the sharing of information
205 related to permits issued under this section. Periodically, the commissioner and director,or their
206 representatives, shall together review, and analyze such reported data from boards with any
207 additional information of both agencies relating to emergency, extension or special permits, to
208 identify animal control problems in geographical areas deemed to pose a recurrent or constant
209 threat to public health and safety.

210 For beavers or muskrats, each such indentified animal problem area that is considered to
211 pose a threat to public health and safety shall be classified as a serious or intermediate threat. If
212 classified a serious threat, the department shall direct the local boards having jurisdiction to: (i)
213 immediately issue additional emergency permits, upon proper application, authorizing the
214 trapping of beavers or muskrats by non-lethal trapping methods, provided any subsequent taking
215 of the animal is performed in accordance with the regulation of the division and, (ii) authorize
216 the permanent breaching of beaver or muskrat dams that are determined to pose such threat,
217 subject to the approval by the local conservation commission; provided, the dam breaching is
218 done in a manner that prevents flooding, erosion or other downstream property destruction and
219 provided further, the dam breaching does not reduce excessively upstream water levels that
220 otherwise, would threaten another species. If classified as an intermediate threat, the local board
221 having jurisdiction shall upon proper application issue additional emergency permits authorizing
222 the installation of water level flow devices in those beaver or muskrat dams that are determined
223 to pose such threat; provided the devices are installed in an environmentally sound manner as
224 determined by the department in consultation with the division. The issuance of such additional
225 permits shall follow the administrative procedures and provisions under this section that are
226 applicable to emergency permits for beaver or muskrat animal problems; except, such additional
227 permits so authorized shall allow the use of alleviation techniques for the period of time as
228 directed by the commissioner, notwithstanding any provision to the contrary.

229 On a periodic basis, all beaver or muskrat control problems that have been identified and
230 classified shall be reviewed to determine if such threat to human health and safety is continuing
231 and, if so, to reevaluate the threat classification and animal control management methods to be
232 implemented.

233 (i) The department shall have the supplementary authority to issue emergency for any
234 period of time, when in the determination of the commissioner, such action to protect public
235 health and safety is necessary or required to achieve the intent and purpose of this section.

236 (j) An applicant filing for an appeal under this section, shall be permitted to submit with
237 an application for appeal, any other written documents, explanations and arguments in support of
238 the appeal, which shall to be considered by authority in deciding such appeal. Appeal hearings
239 conducted under this section shall be informal without unnecessary or unreasonable delay to
240 allow a timely determination of the issue; provided however, the appealing party shall be

241 allowed an adequate opportunity to be heard and present supporting evidence. Notwithstanding
242 any law to the contrary, sections 10 and 11 of chapter 30A, shall not be applicable to this section.

243 Any person who is aggrieved by a determination or undue delay by a board, division or
244 department related to the issuance of any permit under this section, where no further
245 administrative appeal under this section is available, if having proper standing, may obtain
246 judicial review under section 14 of chapter 30A; notwithstanding, such cases shall be de novo
247 and the lack of any formal record of the prior administrative proceedings shall not bar such
248 relief.

249 (k) The trapping prohibitions under section (b) shall not apply to federal departments or
250 agencies of public health in the protection of public health and safety, or scientific research on
251 wildlife that is conducted by the department jointly with an accredited academic institution.

252 (l) The provisions of section 79 of this chapter shall not apply to this section.

253

254 (m) Whoever violates any provisions of this section, or any rule or regulation made under
255 the authority thereof, shall be punished by a fine of not less than $300, nor more than $1,000, or
256 by imprisonment for not more than 6 months, or by both such fine and imprisonment for each
257 trap unlawfully , used, set, placed, or maintained. Each day of violation shall constitute a
258 separate offense. A person found guilty of, or convicted of, or assessed in any manner after a
259 plea of nolo contendere, or penalized for, a second violation of this section shall surrender to an
260 officer authorized to enforce this chapter any trapping license and problem animal control permit
261 issued to such person and shall be barred forever from obtaining a trapping license and a problem
262 animal control permit.