

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas A. Golden, Jr.

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 adoption of the accompanying bill:

An Act to improve the review and regulation of emerging contaminants on public water systems.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>	<i>2/17/2021</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>3/1/2021</i>

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to improve the review and regulation of emerging contaminants on public water systems.

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 160 of Chapter 111 of the Massachusetts General Laws shall be amended to
2 include the following:

3 SECTION 1. For purposes of this act, Maximum Contaminant Level or MCL means the
4 maximum permissible level of a contaminant in water which is delivered to any user of a public
5 water system. Maximum Contaminant Level Goal or MCLG means the level of a contaminant in
6 drinking water at or below which there is no known or expected risk to health. MCLGs allow for
7 a margin of safety.

8 SECTION 2. To address the potential for adverse human health impacts from the
9 presence of potentially toxic substances in the public water supplies of the Commonwealth, and
10 to establish science-based processes and procedures for assessing the risks presented by such
11 substances and a cost-benefit analysis to determine the practicality and efficacy of operational
12 and remedial actions with respect to the substances, there shall be a Science Advisory Board to
13 facilitate timely and accurate toxicological assessments of contaminants of concern, receipt of

14 comments from PWS, public health, municipal, and industry interests regarding the burdens of
15 implementing any new Health Advisory Maximum Contaminant Level Goal (MCLG), or MCL,
16 and reporting formal findings to the MassDEP in connection with any regulatory effort to
17 identify and evaluate whether certain contaminants of concern have such an adverse impact on
18 human health that they should be regulated as contaminants.

19 SECTION 3. Members of the Science Advisory Board will be appointed by the
20 Governor for a term of 5 years. The Science Advisory Board shall consist of 13 members; 6
21 positions will be permanent organization members and 7 positions will be at-large members.
22 Each of the following 6 permanent organization members shall name a representative to serve a
23 5-year term: 1 of whom shall be a representative of the MassDEP Office of Research and
24 Standards (who shall co-chair the Board); 1 of whom shall be a representative of the MA
25 Department of Public Health (who shall co-chair the Board); 1 of whom shall be a representative
26 of the MassDEP Drinking Water Program; 1 of whom shall be a representative of the Mass
27 Water Works Association; 1 of whom shall be a representative of the Massachusetts Municipal
28 Association; and 1 of whom shall be a representative of the Massachusetts Association of Health
29 Boards. The Governor shall appoint representatives for the 7 at-large seats on the Science
30 Advisory Board after receiving nominations from interested individuals or groups representing
31 the following: 1 of whom shall be an epidemiologist affiliated with an accredited academic
32 institutions or local hospital; 1 of whom shall be a a toxicologist credentialed by the American
33 Board of Toxicology; 1 of whom shall be a representative of a community health organization; 1
34 of whom shall be a representative of a national environmental health organization or its local
35 affiliate; 1 of whom shall be a representative from Massachusetts Chemistry & Technology

36 Alliance, Inc.; 1 of whom shall be a representative from a consumer advocate group; and 1 of
37 whom shall be a representative of an environmental advocacy group.

38 SECTION 4. The meetings of the Science Advisory Board shall be convened in
39 accordance with 940 CMR 29.00.

40 SECTION 5. To regulate a substance as a contaminant under 310 CMR 22.00,
41 MassDEP and the Science Advisory Board must both make a proposed finding that the
42 substance: (a) may have an adverse human health effect; (b) that the contaminant is known to
43 occur, or there is substantial likelihood it will occur, in PWSs with a frequency and at levels of
44 public health concern; (c) and that there is an opportunity to reduce significant health risks to
45 people served by a PWS. The Science Advisory Board’s findings must be “based on the best
46 available public health information.”

47 SECTION 6. As part of its formal proposed finding, the Science Advisory Board shall
48 only consider scientific studies that have been peer-reviewed and published. The Science
49 Advisory Board’s finding must include a detailed analysis of the studies that were reviewed
50 during the Science Advisory Board’s deliberation. This summary must articulate the reasons the
51 Science Advisory Board included or excluded any study presented to them.

52 SECTION 7. The Science Advisory Board’s proposed finding shall include: (i) a
53 recommendation for a MCLG, to establish the level of a contaminant in drinking water below
54 which there is no known or expected risk to health; (ii) recommendation for a MCL for the
55 contaminant; and (iii) a determination whether the proposed finding will achieve the objectives
56 of protecting human health, including sensitive sub-populations, in a more cost-effective manner,
57 or with greater net benefits, than other regulatory alternatives.

58 SECTION 8. The Science Advisory Board’s proposed finding shall be published on its
59 website and in the Environmental Monitor. The public shall have at least 45 days after
60 publication to review and comment on the proposed finding.

61 SECTION 9. Within 60 days of the close of the comment period, the Science Advisory
62 Board shall: (a) publish a withdrawal of its proposed finding; (b) publish a response to comments
63 and a revised proposed finding; or (c) publish a response to comments and a final determination
64 in accordance with M.G.L. c. 30A.

65 SECTION 10. After publishing a final determination with any proceedings under M.G.L.
66 c. 30A having been resolved to finality, the Science Advisory Board shall submit its final
67 determination to MassDEP with its formal recommendation regarding the identification of a
68 proposed contaminant of concern.

69 SECTION 11. MassDEP shall conduct its own independent assessment of the proposed
70 contaminant and shall (a) present its preliminary determination to the Safe Drinking Water Act
71 Advisory Committee, and (b) present its preliminary determination to a Small Business
72 Advocacy Review Panel.

73 SECTION 12. A Small Business Advocacy Review (SBAR) panel shall be appointed by
74 the Governor for review of any proposed Drinking Water Standard. The Small Business
75 Advocacy Review Panel shall be made up of 11 members: 2 of whom shall be representatives of
76 the Associated Industries of Massachusetts, 2 of whom shall be economists affiliated with
77 accredited academic institutions, 3 of whom shall be representatives from the Massachusetts
78 Municipal Association (1 of whom shall represent a small community, 1 of whom shall represent
79 a medium sized community, and 1 of whom shall represent a large city), 1 of whom shall be a

80 representative of the Massachusetts Office of Business Development, 1 of whom shall be a
81 representative of the Executive Office of Administration and Finance; 1 of whom shall be a
82 representative of the Massachusetts Treasurers Office, and 1 of whom shall be a representative of
83 the Massachusetts Water Works Association.

84 SECTION 13. The SBAR shall make an independent determination whether the
85 proposed Drinking Water Standard will achieve the objectives of protecting human health,
86 including sensitive sub-populations, in a more cost-effective manner, or with greater net benefits,
87 than other regulatory alternatives.

88 SECTION 14. Following any review and comment by the Safe Drinking Water Act
89 Advisory Committee and the SBAR, MassDEP shall publish the preliminary Determination on
90 its website for review and comment by the public for a minimum of 60 days.

91 SECTION 15. Within 60 days of the close of the comment period, the MassDEP shall:
92 (a) publish a withdrawal of its preliminary Determination; (b) publish a response to comments
93 and a revised preliminary Determination; or (c) publish a response to comments and a final
94 Determination in accordance with M.G.L. c. 30A.

95 SECTION 16. If MassDEP makes a formal Determination to regulate a contaminant,
96 MassDEP must (a) publish a MCLG, to establish the level of a contaminant in drinking water
97 below which there is no known or expected risk to health; and (b) establish a primary drinking
98 water regulation (usually a MCL) within 2 years of deciding to regulate.

99 SECTION 17. The MCLG shall be determined by the Science Advisory Board and
100 MassDEP at the level at which no known or anticipated adverse effects on the health of persons
101 occur and which allows an “adequate margin of safety.” When determining an MCLG, the

102 Science Advisory Board and MassDEP will consider the adverse health risk to sensitive
103 subpopulations, including, but not limited to: (i) infants; (ii) children; (iii) the elderly; and (iv)
104 those with compromised immune systems and chronic diseases.

105 SECTION 18. If it is determined that there is a sensitive subpopulation that is adversely
106 impacted by the contaminant in a particular manner that is distinct from impacts to the general
107 population, that subpopulation shall be identified specifically and a separate MCLG shall be set
108 for this population in addition to a MCLG for the general population.

109 SECTION 19. The MCL(s) shall be set “as close as to the maximum contaminant level
110 goal(s) as feasible” or a Treatment Technique could be established if MCL criteria is not met.

111 SECTION 20. In establishing a MCLG or a MCL, MassDEP must seek public comment
112 and an analysis of the following: (i) Quantifiable and nonquantifiable health risk reduction
113 benefits for which there is a factual basis in the rulemaking record to conclude that such benefits
114 are likely to occur as the result of treatment to comply with each MCLG or MCL; (ii)
115 Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis
116 in the rulemaking record to conclude that such benefits are likely to occur from reductions in co-
117 occurring contaminants that may be attributed solely to compliance with the maximum
118 contaminant level, excluding benefits resulting from compliance with other proposed or
119 promulgated regulations; (iii) Quantifiable and nonquantifiable costs for which there is a factual
120 basis in the rulemaking record to conclude that such costs are likely to occur solely as a result of
121 compliance with the MCL, including monitoring, treatment, and other costs and excluding costs
122 resulting from compliance with other proposed or promulgated regulations; (iv) The incremental
123 costs and benefits associated with each alternative MCL considered; (v) The effects of the

124 contaminant on the general population and on specifically identified groups within the general
125 population such as infants, children, pregnant women, the elderly, individuals with a history of
126 serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse
127 health effects due to exposure to contaminants in drinking water than the general population; (vi)
128 Any increased health risk that may occur as the result of compliance, including risks associated
129 with co-occurring contaminants; (vii) Other relevant factors, including the quality and extent of
130 the information, the uncertainties in the analysis supporting subclauses (i) through (vi), and
131 factors with respect to the degree and nature of the risk.

132 SECTION 21. If MassDEP establishes a MCLG or MCL level that is different from the
133 recommendation in the Science Advisory Board's final determination, MassDEP shall provide
134 written documentation for public comment as to their reasoning.

135 SECTION 22. MassDEP shall prepare a health risk reduction and cost analysis
136 (HRRCA) in support of any Massachusetts Drinking Water Standard.

137 SECTION 23. MassDEP must review its Drinking Water Standards every six years and
138 revise if appropriate.