



## Massachusetts Association of Conservation Commissions

*protecting wetlands, open space and biological diversity through education and advocacy*

### **Testimony Opposing H.665, 666, and 683**

#### **Joint Committee on Environment, Natural Resources and Agriculture**

**October 6, 2015**

Thank you Senate Chair Gobi and House Chair Schmid and members of The Joint Committee on Environment, Natural Resources and Agriculture for this opportunity to testify in opposition to H.665, H.666, and H.683.

My name is Eugene Benson. I am the Executive Director of the Massachusetts Association of Conservation Commissions (MACC) and I speak on behalf of MACC.

Almost every conservation commission in Massachusetts is a member of MACC. We represent more than 2,100 conservation commissioners throughout Massachusetts who are responsible for protecting the natural resources of their communities under the Conservation Act (G.L. c.40, § 8c) and for administering and enforcing the Wetlands Protection Act (G.L. c.131, § 40) and local wetlands bylaws and ordinances. We work to protect wetlands, open space, and biological diversity across Massachusetts through education and advocacy and support of local conservation commissions. We advocate for strong science-based laws, regulations, and policies. We have been doing this work for more than fifty-three years.

MACC opposes H.665, H.666, and H.683. Each of them would reduce the protection of wetlands currently in place under the state's Wetlands Protection Act and the additional protections some communities afford to their natural resources under the Home Rule Amendment of the Massachusetts Constitution.

#### **H.665 An Act providing for more efficient wetlands.**

This bill would wreak havoc with the current system of wetlands protection by only allowing municipalities to adopt local wetland bylaws and ordinances without significant additional expense based on dubious standards and would impose significant staff time requirements and costs on the Massachusetts Department of Environmental Protection (DEP) to review and approve local laws.

The bill would allow local wetlands bylaws/ordinances only if they impose standards or other requirements that are more stringent than or otherwise exceed those in the Wetlands Protection Act (WPA) and regulations (that is the current requirement under case law), and only if, prior to adoption by a municipality, DEP reviews and approves any such proposed local wetlands ordinance or bylaw based upon findings that the proposed ordinance or bylaw has a generally recognized scientific basis, is a recommended best practice technique, is necessary to protect unusual local resources that warrant special or enhanced protection, and does not conflict with the WPA and regulations. Also an appeal of a decision made under a local wetlands ordinance or bylaw goes to DEP in accordance with the WPA and regulations.

We have opposed similar bills in the past and this committee has regularly given such bills unfavorable reports. Currently 192 municipalities have local wetland bylaws or ordinances. The bill would markedly increase DEP's workload and set an unreasonable and resource intensive review standard. It would also effectively eliminate the ability of municipalities to make their own decisions about whether their wetland resources need more protections than those afforded by state law. It also does not indicate whether current local wetland bylaws and ordinances would require DEP approval or if only amendments or new bylaws and ordinances would require approval.

Further, it makes little sense for decisions under local wetland bylaws or ordinances to be appealed to DEP because DEP would not be interpreting its own wetland regulations but instead the local laws of many municipalities. Those appeals currently go to court, which is the correct place for appeals of municipal ordinances and bylaws. Inserting DEP into the appeal process would add another layer before court review, increase expenses and time of litigants and municipalities, and increase DEP's workload unnecessarily. DEP is already resource constrained and does not need this additional burden.

**H.666** An Act relative to the maintenance of existing public ways and wetlands protection.

This bill would amend the WPA to provide an exemption for work that maintains, repairs, or replaces but does not substantially change or enlarge a public way.

We oppose the bill. A public way may be much larger than the roadway surface itself, the exemption could easily have adverse impacts on wetlands, and it does not account for the impact of equipment and staging areas or provide standards for the work. It sets no standards and provides for no oversight of work.

The bill is also unnecessary. WPA regulations currently allow, as minor activities in a buffer zone (i.e., no WPA regulation), vegetation cutting for road safety and maintenance, and pavement repair, resurfacing and reclamation of existing roadways within the right of way configuration -- provided the work meets standards specified in the regulation. 310 CMR 10.02(2)(b)2.n. The bill would reduce protections of wetlands with no showing of necessity.

**H.683** An Act relative to the Massachusetts Wetlands Protection Act.

This bill would amend the WPA to provide an exemption for certain work for fish passage, such as removal of sediments and downed trees from streams when done by the division of marine fisheries, a herring warden, or under the auspices of an authorized public entity and not otherwise impact other interests protected by the WPA.

We oppose the bill. It presents several problems that result from the wording, which is vague, and includes terms that are undefined. There is no record of problems arising from the current regulatory framework. Currently, such work is done under conditions required by conservation commissions to protect the interests identified by the WPA, which includes wildlife habitat.

There appears to have been no coordination with MA DEP, Fish and Game, or Division of Marine Fisheries, which is a significant shortcoming. The bill also would provide no oversight of the work or standards to ensure no adverse impacts on wetlands or wildlife habitat. As written, the bill could have numerous unintended adverse consequences

We urge you to report the bills unfavorably, as this committee has done for identical bills in previous sessions. The amendment it proposes is unnecessary and unwise.

Thank you for the opportunity to provide this perspective and information.