

**Chap. 445.** AN ACT AUTHORIZING THE COUNTY COMMISSIONERS OF BERKSHIRE COUNTY TO EXPEND A SUM OF MONEY FOR THE OBSERVANCE OF THE TWO HUNDREDTH ANNIVERSARY OF SAID COUNTY.

*Be it enacted, etc., as follows:*

The county commissioners of Berkshire county are hereby authorized to expend from any available funds, without further appropriation, a sum, not exceeding twelve thousand dollars, for the purpose of observing the two hundredth anniversary of the incorporation of Berkshire county.

*Approved May 5, 1961.*

**Chap. 446.** AN ACT DESIGNATING THE METROPOLITAN DISTRICT COMMISSION SWIMMING POOL AND ICE SKATING RINK TO BE CONSTRUCTED AT CLEVELAND CIRCLE IN THE BRIGHTON DISTRICT OF THE CITY OF BOSTON AS THE LIEUTENANT JAMES F. REILLY MEMORIAL RECREATION CENTER.

*Be it enacted, etc., as follows:*

The swimming pool and ice skating rink to be constructed at Cleveland Circle in the Brighton district of the city of Boston by the metropolitan district commission shall, upon completion, be known and designated as the Lieutenant James F. Reilly Memorial Recreation Center. A suitable tablet or marker bearing said designation shall be erected and maintained at said recreation center by the commission.

*Approved May 5, 1961.*

**Chap. 447.** AN ACT AUTHORIZING THE DEPARTMENT OF PUBLIC WORKS TO GRANT PERMISSION TO POLISH AMERICAN VETERANS OF SOUTHBRIDGE, MASS., INC., TO ERECT AND MAINTAIN A MEMORIAL IN THE TOWN OF SOUTHBRIDGE.

*Be it enacted, etc., as follows:*

The department of public works is hereby authorized and directed to permit Polish American Veterans of Southbridge, Mass., Inc. to erect a suitable memorial, in honor of Americans of Polish descent who died in the service of the United States, on land located on the southerly side of state highway route 131, also known as West Main street in the town of Southbridge and situated between the points designated as station 8+24 and 8+44 on the state highway layout plan for said town.

The erection and maintenance of said memorial shall be subject to the approval of the chief engineer of said department.

*Approved May 5, 1961.*

**Chap. 448.** AN ACT TO PROTECT LAND TITLES FROM UNCERTAIN AND OBSOLETE RESTRICTIONS AND TO PROVIDE PROCEEDINGS IN EQUITY WITH RESPECT THERETO.

*Be it enacted, etc., as follows:*

SECTION 1. Chapter 184 of the General Laws is hereby amended by adding at the end thereof the following five sections: —

*Section 26.* All restrictions on the use of land or construction thereon which run with the land subject thereto and are imposed by covenant, agreement or otherwise, whether or not stated in the form of a condition, in any deed, will or other instrument, except a lease, mortgage or order of taking by the commonwealth or a political subdivision or public instrumentality thereof, shall be subject to this section and sections twenty-seven to thirty.

For the purposes of said sections: —

1. "Subject parcel" or "subject land" means land upon which such a restriction is imposed.

2. "Benefited land" means land for the benefit of which such a restriction is imposed.

3. "Public records" shall be limited to records filed in the registries of deeds, probate courts and the land court and its registry districts.

4. A description of land shall be sufficient if it specifies the city or town in which the land lies and the place of record in the public records where there is a recorded or registered plan or instrument giving the boundaries of the land and identifies the land with reference to said plan or instrument and, if the land is registered, specifies the certificate or certificates of title thereof.

5. Restrictions may be deemed imposed as part of a common scheme if imposed of record on various parcels in such manner that each owner is entitled to enforce the restrictions against the other parcels, although there may be variations in the restrictions among the various parcels.

Unless the instrument imposing the restriction provides otherwise, it is to be presumed that a restriction imposed as part of a common scheme is enforceable for the benefit of any land only when such land either (a) is bounded by a street by which the subject parcel is bounded or (b) lies in a block surrounded by the same streets as the subject parcel, or (c) is contiguous to said block except for streets or ways.

*Section 27.* No restriction imposed after December thirty-first, nineteen hundred and sixty-one shall be enforceable: —

(a) unless the person seeking enforcement (1) is a party to the instrument imposing the restriction and it is stated to be for his benefit, or (2) is an owner of an interest in benefited land which either adjoins the subject parcel at the time enforcement is sought or is described in the instrument imposing the restriction and is stated therein to be benefited, and

(b) after thirty years from the imposition of the restriction, unless (1) the restriction is imposed as part of a common scheme applicable to four or more parcels contiguous except for any intervening streets or ways, and provision is made in the instrument or instruments imposing it for extension for further periods of not more than twenty years at a time by owners of record, at the time of recording of the extension, of fifty per cent or more of the restricted area in which the subject parcel is located, and an extension in accordance with such provision is recorded before the expiration of the thirty years or earlier date of termination specified in the instrument and names or is signed by one or more of the persons appearing of record to own the subject parcel at the time of such recording, and in case of such recording, twenty years, or the specified extension term if less than twenty years, has not expired after the recording of any such extension without the recording of a further like extension; or (2) in the case of any other restriction, a no-

tice of restriction is recorded before the expiration of the thirty years, and in case of such recording, twenty years have not expired after the recording of any notice of restriction without the recording of a further notice of restriction.

A notice of restriction under this section shall not extend the period of enforceability unless it (a) is signed by a person then entitled of record to the benefit of the restriction and describes his benefited land, if any, (b) describes the subject parcel, (c) names one or more of the persons appearing of record to own the subject parcel at the time, and (d) specifies the instrument imposing the restriction and its place of record in the public records.

*Section 28.* No restriction imposed before January first, nineteen hundred and sixty-two shall be enforceable after the expiration of fifty years from its imposition unless a notice of restriction is recorded before the expiration of such fifty years or before January first, nineteen hundred and sixty-four, whichever is later, and in case of such recording, twenty years have not expired after the recording of any notice of restriction without the recording of a further notice of restriction.

A notice of restriction under this section shall not extend the period of enforceability unless (a) it meets the requirements specified by the last paragraph of section twenty-seven, or (b) the restriction was imposed as part of a common scheme applicable to four or more parcels contiguous except for any intervening streets or ways and the notice (1) is signed by a person then entitled of record to the benefit of the restriction and describes his benefited land, if any, (2) describes the subject parcels to be affected, and (3) specifies the way or ways, public or open to public use, upon which each such parcel abuts, or nearest to which it is located and its street number, if any, and (4) specifies the instrument imposing the restriction and its place of record in the public records. The holder of record of a recorded mortgage upon any land may sign a notice under this section in place of the owner thereof if the notice specifies the mortgage and its place of record in the public records and names one or more of the persons appearing of record to own the land at that time.

*Section 29.* No notice or extension of restriction under sections twenty-seven or twenty-eight shall be effective against a subject parcel (a) if its title is registered, unless the notice or extension is noted on the certificate or certificates of title thereof or (b) if its title is not registered, unless (1) the notice or extension is indexed in the grantor index under the names of the persons named therein as owners of the subject parcel (2) if the instrument imposing the restriction is recorded at a registry of deeds, the notice or extension is noted on the margin of the record of the instrument, and (3) if the instrument imposing the restriction is a will, a duplicate or certified copy of the notice or extension is filed with the records of the probate of the will. No notice under clause (b) of section twenty-eight shall be effective unless indexed in a special index which each register shall maintain arranged alphabetically by city or town and within each city or town, by the ways named, in which are listed the books and pages of record of the notices of restriction and of the instruments therein specified as creating them. Where an instrument imposes more than one restriction a notice or extension may, if it so specifies, apply only to a particular restriction or restrictions. A notice under section twenty-seven or twenty-eight may be

given with respect to any number of parcels subject to the restriction and may be joined in by the owners of any number of parcels having the benefit thereof and may be signed in behalf of any person by an attorney or agent and on behalf of any person under disability by a guardian, conservator or parent. No notice given under section twenty-seven or twenty-eight shall entitle any person to enforce a restriction other than the person giving the notice and his successors in title, nor entitle anyone to enforce a restriction if at the time of recording of the notice the restriction is for any reason no longer enforceable.

*Section 30.* No restriction shall in any proceeding be enforced or declared to be enforceable, whether or not the time for recording a notice or extension under section twenty-seven or twenty-eight has occurred, or such a notice or extension has been recorded, unless it is determined that the restriction is at the time of the proceeding of actual and substantial benefit to a person claiming rights of enforcement. No restriction determined to be of such benefit shall be enforced or declared to be enforceable, except in appropriate cases by award of money damages, if (1) changes in the character of the properties affected or their neighborhood, in available construction materials or techniques, in access, services or facilities, in applicable public controls of land use or construction, or in any other conditions or circumstances, reduce materially the need for the restriction or the likelihood of the restriction accomplishing its original purposes or render it obsolete or inequitable to enforce except by award of money damages, or (2) conduct of persons from time to time entitled to enforce the restriction has rendered it inequitable to enforce except by award of money damages, or (3) in case of a common scheme the land of the person claiming rights of enforcement is for any reason no longer subject to the restriction or the parcel against which rights of enforcement are claimed is not in a group of parcels still subject to the restriction and appropriate for accomplishment of its purposes, or (4) continuation of the restriction on the parcel against which enforcement is claimed or on parcels remaining in a common scheme with it or subject to like restrictions would impede reasonable use of land for purposes for which it is most suitable, and would tend to impair the growth of the neighborhood or municipality in a manner inconsistent with the public interest or to contribute to deterioration of properties or to result in decadent or substandard areas or blighted open areas, or (5) enforcement, except by award of money damages, is for any other reason inequitable or not in the public interest.

Nothing herein shall prevent a court from issuing a temporary injunction or restraining order pending determination of enforceability of a restriction.

**SECTION 2.** Section 3 of chapter 184A of the General Laws, as appearing in section 1 of chapter 641 of the acts of 1954, is hereby amended by striking out the third and fourth sentences.

**SECTION 3.** Chapter 240 of the General Laws is hereby amended by inserting after section 10 the following three sections: —

*Section 10A.* The superior court and the land court shall have concurrent jurisdiction in equity upon petition by any person or persons claiming an estate of freehold, or an unexpired term of not less than ten years, in land subject to a restriction described in section twenty-six of chapter one hundred and eighty-four, to determine and declare whether and in what manner and to what extent and for the benefit of what land

the restriction is then enforceable, whether or not a violation has occurred or is threatened. The petition shall state the names and addresses, so far as known to the petitioner or petitioners, of the owners of the subject parcels as to which the determination is sought, of the owners of any benefited land and of any persons benefited other than persons interested in benefited land. There shall be filed therewith (1) a certified copy of the instrument or instruments imposing the restriction, or of a representative instrument if there are many and the petition includes a summary of the remainder, and (2) a plan or sketch showing the approximate locations of the parcels as to which the determination is sought, and the other parcel or parcels, if any, which may have the benefit of the restriction, and the ways, public or open to public use, upon which the respective parcels abut or nearest thereto, and the street numbers, if any, of such parcels.

*Section 10B.* The court shall, after consideration of the petition, instrument or instruments and plan or sketch, and such further documents or evidence as it may require, prescribe the form of notice to be given, the persons to be named or described therein, the manner of service of the notice, and the proof to be required of such service. The court may (1) permit service by registered mail on any person, (2) permit names and addresses of owners to be given from the last assessments for local taxation and record search for subsequent changes, (3) require notice to be published in a newspaper or posted on the subject land or both, (4) name as representative of all persons entitled to enforce the restriction, if it benefits more than four parcels, the owners of the benefited land abutting the subject parcel or parcels and of such additional benefited land in or facing the same block or blocks or in the same vicinity as it deems appropriate, describing the remaining persons generally as the owners of certain identified land and permitting service upon them by publication only, (5) order other or additional notice at any time as it deems most effectual, and (6) if it finds that there are persons benefited but not actually served and for whom others served are not sufficiently representative, appoint a disinterested person to represent them and order costs thereof paid by the petitioner or petitioners. Any person entitled to enforce the restriction, whether or not named or described in the notice, may become a party to the proceeding by filing answer within the time specified by the notice or by the court.

*Section 10C.* Any determination or declaration that the restriction is or is not enforceable, or is enforceable only in a certain manner or to a certain extent or for the benefit of certain land shall be in rem and operate directly upon the subject land, and be binding upon all persons entitled to enforce the restriction thereon. If the court determines that the restriction is enforceable only by award of money damages it shall, whether or not a violation has occurred, make such award, according to general rules of equity, and upon payment thereof determine that the land is free of the restriction.

SECTION 4. Notwithstanding the provisions of section three of chapter one hundred and eighty-four A of the General Laws, as amended by section two of this act, any person having a right of entry or possibility of reverter which would have been valid under the provisions of said section three of said chapter one hundred and eighty-four A, as in effect prior to the effective date of this act, may bring a proceeding based on such right or possibility; provided, that a statement with respect to

such right or possibility sufficient to satisfy the provisions of section thirty-one A of chapter two hundred and sixty of the General Laws is recorded or registered, as therein provided, prior to January first, nineteen hundred and sixty-four.

SECTION 5. Section 31A of chapter 260 of the General Laws, inserted by section 2 of chapter 258 of the acts of 1956, is hereby amended by striking out, in line 7 and in line 8, the word "sixty-six" and inserting in place thereof, in each instance, the word:— sixty-four.

*Approved May 10, 1961.*

**Chap. 449.** AN ACT GRANTING CONSENT TO THE ACQUISITION BY THE UNITED STATES OF LAND FOR THE LITTLEVILLE RESERVOIR ON THE MIDDLE BRANCH OF THE WESTFIELD RIVER.

*Be it enacted, etc., as follows:*

Consent is hereby given pursuant to the seventeenth clause of the eighth section of the first article of the constitution of the United States to the acquisition by the United States by purchase, condemnation, or otherwise of any tract of land within this commonwealth required for use in connection with the construction, maintenance and operation of the projects authorized by Congress under the flood control acts of June twenty-second, nineteen hundred and thirty-six, June twenty-eighth, nineteen hundred and thirty-eight and December twenty-second, nineteen hundred and forty-four, the water supply act of nineteen hundred and fifty-eight, and all other acts amendatory thereto, for the benefit of navigation, conservation, recreation, and the control of destructive flood waters, with respect to the project hereinafter specified; provided, that a suitable plan of the tract of land so acquired has been or shall be filed in the office of the state secretary within one year after the acquisition thereof. But this commonwealth shall retain concurrent jurisdiction with the United States in and over any such land to the extent that all civil and criminal processes lawfully issued under authority of the commonwealth may be executed thereon in the same way and manner as if this consent had not been given; and exclusive jurisdiction over any such tract or any part thereof shall revert in the commonwealth whenever it shall cease to be the property of the United States.

The project hereinbefore referred to is:— The Littleville Reservoir on the Middle Branch of the Westfield River.

*Approved May 10, 1961.*

**Chap. 450.** AN ACT RELATIVE TO THE DEDUCTION FOR CERTAIN TAX-EXEMPT SECURITIES IN THE COMPUTATION OF CORPORATE EXCESS.

*Be it enacted, etc., as follows:*

SECTION 1. Subdivision (b) of paragraph 4 of section 30 of chapter 63 of the General Laws is hereby amended by striking out the first paragraph, as appearing in section 3 of chapter 548 of the acts of 1960, and inserting in place thereof the following paragraph:— The cost of securities employed in the commonwealth, the income of which, if any, if re-