

By Mr. Manning of Milton, petition of Barry T. Hannon and M. Joseph Manning for legislation to establish a land owners assurance fund under the direction and control of the State Treasurer. Ways and Means (House).

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Nine.

AN ACT ESTABLISHING THE LAND OWNERS ASSURANCE FUND.

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

1 Chapter 36 of the General Laws is hereby amended by inserting
2 after section 25 the following eight sections: —

3 *Section 25A.* There shall be established a fund to be known as
4 the land owners assurance fund under the direction and control of
5 the state treasurer. The state treasurer shall have the powers and
6 duties to invest said funds and to make payments therefrom as
7 provided hereafter. Income from the fund shall be added to the
8 principal.

9 *Section 25B.* Each register of deeds shall, monthly, pay into the
10 fund so established, one per cent of all fees received by him
11 pursuant to section thirty-eight of chapter two hundred and
12 sixty-two of the General Laws and one per cent of all excise taxes
13 paid to him pursuant to chapter sixty-four D of the General Laws.
14 Said payments shall be made to the state treasurer until such time
15 as the fund reaches the sum of ten million dollars and the state
16 treasurer shall notify each register that no further contributions be
17 made. When the aggregate amount becomes less than ten million
18 dollars contributions will again be made by each register.

19 *Section 25C.* A person who, without negligence on his part or
20 on the part of his agent, sustains loss or damage, or is deprived of
21 land or of any estate or interest therein by any error made in the
22 indexes or other records required to be kept by register of deeds,

23 may recover in contract in the superior court compensation for
24 such loss or damage or for such land or estate or interest therein
25 from the fund herein created; but a person so deprived of land or
26 an estate or interest therein or sustaining loss or damage as herein
27 set forth, having a right of action or other remedy for the recovery
28 of such land, estate, loss or damage, shall exhaust such remedy
29 before resorting to the action of contract herein provided.

30 *Section 25D.* If such action of contract is brought pursuant to
31 this chapter to recover for loss or damage or for deprivation of
32 land or for any estate or interest therein, the action shall be
33 brought against the state treasurer as sole defendant.

34 If judgment is entered against the state treasurer the justice of
35 the superior court before whom the action is tried shall direct the
36 clerk to transmit to the comptroller a certificate of the entry of
37 judgment and of the amount due, and the state treasurer shall pay
38 the same upon the certificate of the comptroller.

39 *Section 25E.* If the fund at any time is not sufficient to meet the
40 amount called for by such certificate of the comptroller, the state
41 treasurer shall make up the deficiency from any funds in the
42 treasury not otherwise appropriated; and, in such case, any
43 amounts thereafter received by the state treasurer on account of
44 the fund shall be transferred to the general funds of the treasury,
45 until the amount paid on account of the deficiency shall have been
46 made up.

47 *Section 25F.* In every case where payment has been made by
48 the state treasurer under section one hundred and three, the com-
49 monwealth shall be subrogated to the rights of the plaintiff against
50 any other parties and the state treasurer shall enforce the same,
51 and the amounts recovered shall be placed to the account of the
52 fund.

53 *Section 25G.* The fund shall not be liable for any loss, damage
54 or deprivation occasioned by a breach of trust, whether express,
55 implied or constructive, by any owner who is trustee, or by the
56 improper exercise of any power of sale in a mortgage, nor shall any
57 plaintiff recover in contract as compensation under this chapter
58 more than the fair market value of the land at the time when he
59 suffered the loss, damage or deprivation thereof.

60 *Section 25H.* Actions of contract for compensation under this

61 chapter by reason of any loss or damage or deprivation of land or
62 any estate or interest therein shall be begun within six years after
63 the cause of action accrued; but the plaintiff in an action for the
64 recovery of the land or estate or interest therein against someone
65 other than the register or his employees or agents, may bring the
66 action of contract for compensation within one year after the
67 termination of such action. Said action of contract shall survive to
68 the personal representative of the owner, unless barred in his
69 lifetime, but the proceeds thereof shall be treated as real estate.

