

**SENATE . . . . . No. 1329**

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By Mr. Walsh, a petition (accompanied by bill, Senate, No. 1329) of Joseph B. Walsh for legislation to release residual rights of the Commonwealth in and to landlocked lands. Natural Resources and Agriculture.

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**The Commonwealth of Massachusetts**

**In the Year One Thousand Nine Hundred and Eighty-four.**

**AN ACT RELEASING RESIDUAL RIGHTS OF THE COMMONWEALTH  
IN AND TO LANDLOCKED LANDS.**

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

1 The General Laws are hereby amended by inserting after  
2 chapter 91A the following chapter: —

3 **CHAPTER 91B.**

4 *Section 1.* The general court hereby finds, determines and  
5 declares that: —

6 (1) Throughout the history of the Commonwealth, vari-  
7 ous lands that were or once may have been tidelands or sub-  
8 merged lands have been filled and no longer have direct front-  
9 age on the waters and harbors of the Commonwealth.

10 (2) Such landlocked lands have been repeatedly sold, leased,  
11 taxed and otherwise treated in good faith by the Common-  
12 wealth, the municipalities and private citizens as lands owned  
13 in fee.

14 (3) It is crucial to the social and economic development of  
15 the Commonwealth that such landlocked lands be freely trans-  
16 ferable, marketable, and mortgageable.

17 (4) The retention by the Commonwealth of any residual  
18 rights to such landlocked lands now may render them unmar-  
19 ketable, unmortgageable and incapable of productive develop-  
20 ment.

21 (5) Certain of such landlocked lands may become blighted,  
22 underutilized or unused as a result of uncertainty as to the  
23 existence and continued enforceability of such residual rights  
24 of the Commonwealth, which rights threaten to involve the

25 Commonwealth and the parties in possession of these lands in  
26 frequent and complicated controversy or litigation or to neces-  
27 sitate a succession of special acts designed to clear title to  
28 such lands.

29 (6) The enactment of this chapter will facilitate and pro-  
30 mote productive development by eliminating or reducing such  
31 litigation and the need for such special acts whereby such  
32 lands will be rendered marketable, mortgageable and other-  
33 wise capable of productive development for the economic and  
34 social welfare of the people of the Commonwealth.

35 (7) The public interest in conserving and maintaining the  
36 waters and harbors of the Commonwealth is virtually non-  
37 existent with respect to such lands, and of far less importance  
38 than the public interest and public purpose in clearing title to  
39 such lands and extinguishing residual rights, if any, of the  
40 Commonwealth therein.

41 (8) The existing regulatory requirements and restrictions  
42 of the Commonwealth and its political subdivisions, and the  
43 power to enact additional requirements and restrictions upon  
44 such terms and conditions as may be appropriate, adequately  
45 protect the public interest in such landlocked lands.

46 *Section 2.* For the purposes of this chapter, the following  
47 words shall have the following meanings: —

48 “Department”, the waterways division of the department of  
49 environmental quality engineering.

50 “Granting instrument”, any grant, charter, license, deed,  
51 special or general act or resolution of the Commonwealth or  
52 any political subdivision, independent agency, or body politic  
53 and corporate thereof duly authorized by the Commonwealth,  
54 purporting to grant rights of the Commonwealth in tidelands  
55 or submerged lands to any public or private person, or to au-  
56 thorize or direct the placement of solid fill upon any such  
57 lands.

58 “Landlocked lands”, all former tidelands or submerged lands  
59 which, on January first, nineteen hundred and eighty-one were  
60 (a) filled solid and (b) were entirely separated by a way or  
61 interconnected ways from tidelands or submerged lands.

62 “License”, a granting instrument issued under chapter 91  
63 of the General Laws or prior laws allowing the placement of

64 fill or structures within tidelands or submerged lands, other  
65 than a license made directly by the general court prior to the  
66 approval of St. 1872 c. 236.

67 “Natural processes”, the processes of accretion, erosion or  
68 submergence and such other processes of nature which may  
69 change the configuration of tidelands or submerged lands.

70 “Residual rights”, all right, title and interest of the Com-  
71 monwealth in landlocked lands reserved or retained from, or  
72 not included, in, any granting instrument, whether because of  
73 failure to make a grant of all of the commonwealth's right,  
74 title and interest in such lands, any condition, restriction or  
75 limitation on the use of or title to such lands which is implied  
76 either by the terms of any granting instrument or in law,  
77 any public trust affecting such lands, or otherwise. Residual  
78 rights shall not include any title rights of the Commonwealth  
79 which are expressly set forth as a reservation condition, right  
80 or reverter, restriction or retained easement in any grant,  
81 deed, charter or special act, but shall include any right of  
82 revocation, implied or expressed, in any license affecting land-  
83 locked lands.

84 “Submerged lands”, lands and water lying seaward of the  
85 line or primitive extreme low water or any later line of ex-  
86 treme low water resulting from natural processes.

87 “Tidelands”, lands and waters lying seaward of the line of  
88 primitive mean high water or any later line of mean high  
89 water resulting from natural processes and landward of the  
90 line of primitive extreme low water or any later line of ex-  
91 treme low water resulting from natural processes.

92 “Way”, any public highway, public way, private way laid  
93 out under authority of statute, way in unopposed overt public  
94 use, or way under the control of a park commission or body  
95 having like powers, whether or not such way is at, above or  
96 below grade provided that any such way shall be in use for  
97 vehicular traffic.

98 *Section 3.* Without derogating from, and in addition to any  
99 other rights howsoever and whenever obtained, landlocked  
100 lands shall hereafter be free of all residual rights, and all re-  
101 sidual rights in and to all such lands are hereby absolutely  
102 conveyed, released, and surrendered.

103 *Section 4.* Any owner, licensee or party in possession of  
104 landlocked lands may record or register, as appropriate with  
105 the registry of deeds or registry district of the land court for  
106 the county in which such landlocked lands lie, a plan of such  
107 lands prepared by a registered land surveyor or a registered  
108 professional engineer, duly licensed by the Commonwealth.  
109 Such plan shall show all necessary lines of ownership or pos-  
110 session, the location of all solid land and, to the extent neces-  
111 sary to obtain the benefit of this chapter, the location of all  
112 ways affecting such lands. If the lands shown on the plan are  
113 landlocked lands as defined in section two and, if such land-  
114 locked lands are located in a city or town in which General  
115 Laws chapter forty-one, sections eighty-one K to eighty-one  
116 GG, inclusive, are in effect, the plan shall also bear an en-  
117 dorsement of the planning board of the city or town in which  
118 such lands lie pursuant to section eighty-one P of said chap-  
119 ter forty-one. Such plan shall have on its face, or there shall  
120 be recorded or registered therewith, an affidavit executed by  
121 such surveyor, containing: —

122 (a) a description and reference to any applicable granting  
123 instrument which, if previously recorded or registered shall  
124 be appropriately referenced to the location of the granting  
125 instrument in the public records, and, if not previously re-  
126 corded or registered, shall be recorded or registered as an  
127 exhibit to such affidavit; and,

128 (b) such surveyor's or engineer's certification to the  
129 Commonwealth that all information shown on the plan was  
130 derived by such surveyor or engineer from a field survey  
131 of the land shown and that all land shown on the plan as  
132 solid land was solid land on or before January first, nineteen  
133 hundred and eighty-one.

134 The register of each registry of deeds and each registry dis-  
135 trict of the land court shall accept such plan and affidavit for  
136 recording or registration as appropriate, upon payment of a  
137 fee of twenty-five dollars. No plan or affidavit which lacks any  
138 information, certification or endorsement required by this  
139 section shall be recorded or registered. The recording or reg-  
140 istration of such plan shall conclusively establish that all of  
141 the land shown thereon as having been solid land as of Janu-

142 ary first, nineteen hundred and eighty-one has the benefit of  
143 the conveyance, release and surrender of rights affected by  
144 section three.

145 *Section 5.* No owner of landlocked lands or any interest  
146 therein shall require any further approval or licensing by the  
147 department, or any successor in authority thereto acting un-  
148 der the provisions of chapter ninety-one of the General Laws,  
149 to authorize the placement of any buildings, structures or  
150 improvements upon such lands or to allow the maintenance,  
151 repair, or replacement of solid fill or any structures, buildings  
152 and improvements thereon. In the event of a taking thereof  
153 by eminent domain or other substantial interference with the  
154 use thereof by authority of the Commonwealth or any politi-  
155 cal subdivision, independent agency or body politic and cor-  
156 porate thereof, the then owner or owners of such lands or any  
157 interests therein shall be entitled to receive full compensation  
158 for the fair market value of all such landlocked lands, or in-  
159 terests therein and all structures, buildings, and improvements  
160 constructed thereon.

161 *Section 6.* Nothing in this chapter shall preclude any per-  
162 son, the Commonwealth or any political subdivision, independ-  
163 ent agency or body politic and corporate thereof from assert-  
164 ing title to or rights in landlocked lands, provided such title  
165 or rights are not residual rights conveyed, released and sur-  
166 rendered by this Chapter, nor shall any person, or the Com-  
167 monwealth or any political subdivision, independent agency  
168 or body politic and corporate thereof, be precluded from seek-  
169 ing an adjudication of the boundaries to such lands pursuant  
170 to the provisions of sections nineteen through twenty-five, in-  
171 clusive, of chapter two hundred and forty.

172 *Section 7.* This chapter supersedes and replaces any prior  
173 inconsistent limitation on title to, or maintenance or use of  
174 solid fill and improvements upon landlocked lands, but this  
175 chapter shall not derogate from or limit the extent of any  
176 grant effected by any prior granting instrument.





