

By Mr. Angelo of Saugus, petition of Steven Angelo and Joseph B. McIntyre for legislation to release residual rights of the Commonwealth in and to landlocked lands. Natural Resources and Agriculture.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety.

AN ACT RELEASING RESIDUAL RIGHTS OF THE COMMONWEALTH IN AND TO  
LAND LOCKED 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 SECTION 1. The General Laws are hereby amended by  
2 inserting after 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, various  
7 lands that were or once may have been tidelands or submerged  
8 lands have been filled and no longer have direct frontage on the  
9 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 Commonwealth,  
12 the municipalities and private citizens as lands owned in fee.

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

16 (4) The retention by the Commonwealth of any residual rights  
17 to such landlocked lands now may render them unmarketable,  
18 unmortgageable and incapable of productive development.

19 (5) Certain of such landlocked lands may become blighted,  
20 underutilized or unused as a result of uncertainty as to the

21 existence and continued enforceability of such residual rights of  
22 the Commonwealth, which rights threaten to involve the  
23 Commonwealth and the parties in possession of these lands in  
24 frequent and complicated controversy or litigation or to  
25 necessitate succession of special acts designed to clear title to such  
26 lands.

27 (6) The enactment of this chapter will facilitate and promote  
28 productive development by eliminating or reducing such litigation  
29 and the need for such special acts whereby such lands will be  
30 rendered marketable, mortgageable and otherwise capable of  
31 productive development for the economic and social welfare of  
32 the people of the Commonwealth.

33 (7) The public interest in conserving and maintaining the  
34 waters and harbors of the Commonwealth is virtually non-existent  
35 with respect to such lands, and insignificant as compared to the  
36 public interest and public purpose served by clearing title to such  
37 lands and extinguishing residual rights, if any, of the  
38 Commonwealth therein.

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

44 Section 2. For the purposes of this chapter, the following  
45 words shall have the following meanings:

46 "Department," the waterways division of the department of  
47 environmental protection.

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

55 "Landlocked lands", all tidelands and submerged lands which,  
56 as of January first, nineteen hundred and eighty-one were filled  
57 solid and were either:

58 (1) shown or described, according to the records of the extreme  
59 low water or any later line of extreme low water resulting from  
60 natural processes.

61 “Tidelands”, lands and water laying seaward of the line of  
62 primitive mean high water or any later line of mean high water  
63 resulting from natural processes and landward of the line of  
64 primitive extreme low water or any later line of extreme low water  
65 resulting from natural processes.

66 Section 3. Without derogating from, and in addition to any  
67 other rights howsoever and whenever obtained, landlocked lands  
68 shall hereafter be free of all residual rights, and all residual rights  
69 in and to all such lands are hereby absolutely conveyed, released,  
70 and surrendered.

71 Section 4. Any owner, licensee or party in possession of  
72 landlocked lands may record or register, as appropriate with the  
73 registry of deeds or registry district of the land court for the county  
74 in which such landlocked lands lie, a plan of such lands prepared  
75 by a registered land surveyor or a registered professional engineer,  
76 duly licensed by the Commonwealth. Such plan shall show all  
77 necessary lines of ownership or possession, the location of all solid  
78 land and, to the extent necessary to obtain the benefit of this  
79 chapter, the location of all ways affecting such lands. If the lands  
80 shown on the plan are landlocked lands as defined in section two  
81 and, if such landlocked lands are located in a city or town in which  
82 General Laws chapter forty-one sections eighty-one K to eighty-  
83 one GG, inclusive, are in effect, the plan shall also bear an  
84 endorsement of the planning board of the city or town in which  
85 such lands lie pursuant to section eighty-one P of said chapter  
86 forty-one. Such plan shall have on its face, or there shall be  
87 recorded or registered therewith, an affidavit executed by such  
88 surveyor or registered professional engineer, containing: —  
89 exhibit to such affidavit; — and,

90 (b) such surveyor’s or engineer’s certification to the Common-  
91 wealth that all information shown on the plan was derived by such  
92 surveyor or engineer from a field survey of the land shown and  
93 that all land shown on the plan as solid land was solid land on  
94 or before January first, nineteen hundred and eighty-one.

95 The register of each registry of deeds and each registry district  
96 of the land court shall accept such plan and affidavit for recording  
97 or registration as appropriate, upon payment of a fee of twenty-  
98 five dollars. No plan or affidavit which lacks any information,  
99 certification or endorsement required by this section shall be  
100 recorded or registered. The recording or registration of such plan

101 shall conclusively establish that all of the land shown thereon as  
102 having been solid land as of January first, nineteen hundred and  
103 eighty-one has the benefit of the conveyance, release and surrender  
104 of rights affected by section three.

105 Section 5. No owner of landlocked lands or any interest therein  
106 shall require any further approval or licensing by the department,  
107 or any successor in authority thereto acting under the provisions  
108 of chapter ninety-one of the General Laws, to authorize the  
109 placement of any buildings, structures or improvements upon  
110 such lands or to allow the maintenance, repair, or replacement  
111 of solid fill or any structures, buildings and improvements  
112 thereon. In the event of a taking thereof by eminent domain or  
113 other substantial interference with the use thereof by authority  
114 of the Commonwealth or any political subdivision, independent  
115 agency or body politic and corporate thereof, the then owner or  
116 owners of such lands or any interests therein shall be entitled to  
117 receive full compensation for the fair market value of all such  
118 landlocked lands, or interest therein and all structures, buildings,  
119 and improvements constructed thereon.

120 Section 6. Nothing in this chapter shall preclude any person,  
121 the Commonwealth or any political subdivision, independent  
122 agency or body politic and corporate thereof from asserting title  
123 to or rights in landlocked lands, provided such title or rights are  
124 not residual rights conveyed, released and surrendered by this  
125 chapter, nor shall any person, or the Commonwealth or any  
126 political subdivision, independent agency or body politic and  
127 corporate thereof, be precluded from seeking an adjudication of  
128 the boundaries to such lands pursuant to the provisions of sections  
129 nineteen through twenty-five, inclusive, of chapter two hundred  
130 and forty.

131 Section 7. This chapter supersedes and replaces any prior  
132 inconsistent limitation on title to, or maintenance or use of solid  
133 fill and improvements upon landlocked lands, but this chapter  
134 shall not derogate from or limit the extent of any grant effective  
135 by any prior granting instrument.