

By Mr. Hynes of Marshfield, petition of Frank M. Hynes and Carol C. Amick relative to the coastal protection of the Commonwealth. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Six.

AN ACT RELATIVE TO THE COASTAL PROTECTION OF THE COMMONWEALTH.

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

1 *Whereas*, The tidal flats and submerged lands in the
2 Commonwealth of Massachusetts are an essential link between
3 the uplands and sea;

4 *Whereas*, The tidal flats and submerged lands in the
5 Commonwealth of Massachusetts are a valuable public coastal
6 resource — both for their environmental and economic
7 characteristics;

8 *Whereas*, These areas are commonly referred to as tidelands;
9 THE GENERAL COURT DOES HEREBY RESOLVE THAT
10 THE PUBLIC RIGHTS IN TIDELANDS SHALL BE
11 ACKNOWLEDGED IN THE FOLLOWING MANNER:

12 1. Massachusetts General Laws, Chapter 91, sets forth the
13 appropriate and preferred method to authorize the use of
14 tidelands;

15 2. The General Court has delegated to the DEQE and MCZM
16 the case by case evaluation of proposed structures, fill and other
17 uses in tidelands due to the specific expertise of these agencies;

18 3. It is the policy of the General Court that individual
19 irrevocable tidelands licenses are not necessary or appropriate to
20 respond to concerns about financial security and that such
21 concerns shall be addressed by amending Chapter 91 or in
22 corresponding regulations;

23 4. The General Court will from time to time, entertain policy

24 amendments to refine the provisions of Chapter 91 as warranted
25 to facilitate a clear understanding of the intent of that Chapter
26 as amended in Chapter 589 of the Acts of 1983.

1 SECTION 1. Section 1 of chapter 91 of the General Laws, as
2 most recently amended by Chapter 589 of the Acts of 1983, is
3 hereby further amended by adding the following definitions:

4 “Substantial change in use”, a use for a continuous period of
5 at least one year of ten percent or more of the surface area of the
6 authorized or licensed premises or structures for a purpose
7 unrelated to the authorized or licensed use or activity.

8 “Substantial structural alteration”, a change in the dimensions
9 of a principal building or structure which increases by more than
10 ten percent the height or ground coverage of the building or
11 structure specified in the authorization or license, or an increase
12 by more than ten percent of the surface area of the fill specified
13 in the authorization or license.

1 SECTION 2. Said Chapter 91 is hereby further amended by
2 striking out Section 15, as most recently amended by Section 25
3 of Chapter 589 of the Acts of 1983, and inserting in place thereof
4 the following new section:

5 Section 15. Every authority or license granted since eighteen
6 hundred and sixty-eight or hereafter granted in the common-
7 wealth to any person to build a structure or do other work in,
8 over and under the Connecticut River of the nontidal part of the
9 Merrimack River or in, over or under the waters of any great pond
10 or at any outlet thereof below high water mark, or upon ground
11 over which the tide ebbs and flows, or to fill up or to enclose the
12 same, whether such ground is above or below low water mark,
13 or within or beyond one hundred rods from high water mark, or
14 whether private property or property of the commonwealth shall
15 be subject to the following conditions, whether expressed in the
16 act, resolve or license granting the same or not. Said authority
17 or license shall be revocable at the discretion of the general court,
18 or by the department for non-compliance with the terms and
19 conditions set forth therein. The license shall expire as to all work
20 authorized or licensed not completed within five years from the

21 date of such authorization or license or such other period of time
22 specified therein; provided, however, that for good cause shown
23 the department may extend, without public hearing or notice, the
24 construction period of the authorization or license for one or more
25 one-year periods. Revocation by the general court of licenses
26 issued after January first, nineteen hundred and eighty-four shall
27 be treated as a taking of real property requiring payment of just
28 compensation in accordance with the provisions of chapter
29 seventy-nine for valuable structures, fillings, enclosures, uses or
30 other improvements built, made or continued in compliance with
31 said authorization or license. Except as provided above, the grant
32 of a license pursuant to this chapter shall not convey a property
33 right, nor authorize any injury to property or invasion of rights
34 of others. A license issued pursuant to this chapter is hereby made
35 a mortgageable interest lawful for investment by any banking
36 association, trust company, savings bank, cooperative bank,
37 investment company, insurance company, executor, trustee or
38 other fiduciary, and any other person who is now or may hereafter
39 be authorized to invest in any mortgage or other obligation of
40 a similar nature.

1 SECTION 3. Section 18 of said Chapter 91, as most recently
2 amended by Section 26 of Chapter 589 of the Acts of 1983, is
3 hereby further amended by striking out the first paragraph, and
4 inserting in place thereof the following new paragraph:

5 Section 18. Every license granted under this chapter shall be
6 signed by the department, shall state the conditions on which it
7 is granted, including, but not limited to the specific use to which
8 the licensed structure or fill is restricted, and shall specify by metes,
9 bounds and otherwise the location, dimensions, and limits and
10 mode of performing the work authorized thereby. Any changes
11 in use or structural alteration of a licensed structure or fill, whether
12 said structure or fill first was licensed prior to or after the effective
13 date of this section, shall require the issuance by the department
14 of a new license in accordance with the provisions and procedures
15 established in this chapter. Any unauthorized substantial change
16 in use or unauthorized substantial structural alteration shall
17 render the license void. Licenses granted by the department

18 pursuant to this chapter shall be revocable by the department for
19 noncompliance with the conditions set forth therein. The
20 department shall not revoke any license until it has given written
21 notice of the alleged noncompliance to the licensee and those
22 persons who have filed a written request for such notice with the
23 department and afforded them a reasonable opportunity to
24 correct said noncompliance. The department may promulgate
25 regulations for implementation for its authority under this
26 chapter.

1 SECTION 4. The seventh paragraph of said Section 18 of said
2 Chapter 91 is hereby amended by inserting after the word “tide-
3 lands”, in line 5, the word: — if.

1 SECTION 5. Section 22 of said chapter 91, as most recently
2 amended by section 27 of chapter 589 of the acts of 1983, is hereby
3 further amended by striking out the second sentence, and inserting
4 in place thereof the following new sentence: — The department
5 shall by regulation provide for a method for determination of such
6 compensation which may, in the department’s discretion, be based
7 on either a schedule of rates per square yard of commonwealth
8 tidelands occupied or on an appraisal of the fair market value of the
9 rights granted by the commonwealth, and which may in the
10 department’s discretion be assessed either as a lump sum payable in
11 full prior to issuance of the license or as a series of annual payments
12 which shall be required as a condition of the license.

1 SECTION 6. Section 2 of chapter 183A of the General Laws is
2 hereby amended by adding at the end thereof the following sen-
3 tence: — For purposes of this section, the holder of a license granted
4 by the department of environmental quality engineering under the
5 provisions of chapter ninety-one for development of common-
6 wealth tidelands shall be deemed the sole owner of the land, and the
7 licensee shall be deemed the holder of a sufficient interest in real
8 estate to be submitted to and governed by the provisions of this
9 chapter.