

By Mr. Lambert of Fall River, petition of Edward M. Lambert, Jr., relative to private shellfish grants by cities and towns in the Commonwealth. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Four.

AN ACT RELATIVE TO PRIVATE SHELLFISH GRANTS.

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. Section 57 of chapter 130 of the General Laws,
2 as appearing in the 1990 Official Edition, is hereby amended by
3 striking out the first paragraph and inserting in place thereof the
4 following two paragraphs: —

5 The city council of a city or the selectmen of a town may, after
6 public notice and hearing thereon, issue an invitation for bids for
7 the granting of a license for a period not exceeding ten years to
8 plant, grow, and take shellfish and to plant cultch for the purpose
9 of catching shellfish seed, in such city or town at all times of the
10 year, in, upon or from a specific portion of flats or land under
11 coastal waters, provided the division of marine fisheries shall,
12 after inspection, certify that the license and operation thereunder
13 would cause no substantial adverse effect on the natural shellfish
14 resources of the town, and provided further, no license shall be
15 issued for any area then or within two years prior thereto, closed
16 for municipal cultivation under the provisions of section fifty-
17 four. Bids made hereunder shall be opened publicly either (1) at a
18 meeting subject to the provisions of section eleven A½ of chapter
19 thirty A, in the presence of a quorum, and the names of all bidders
20 and the amounts of their bids shall be entered in the minutes, or
21 (2) in the presence of one or more witnesses who shall sign a
22 statement under penalties of perjury listing the names of all bid-
23 ders and the amounts of their bids and declaring that said list is a

24 complete and accurate list of bids opened in the presence of said
25 witnesses. Such minutes or statement, or a certified copy thereof,
26 shall be filed. A bid shall be evaluated based solely on the require-
27 ments and criteria set forth in the invitation for bids and the
28 licenses shall be granted to such bidder who in the judgment of
29 the city council or the selectmen best serve the interests of the
30 community. Bids shall include without limitation, the name and
31 residence of the applicant, the location and area and a definite
32 description made by reference to a survey conducted by the bid-
33 der. Licenses under this section shall be issued upon forms sup-
34 plied by such cities and towns and upon such terms and conditions
35 and subject to such regulations as the city council or selectmen
36 issuing the same shall deem proper, but not so as to impair the pri-
37 vate rights of any person or to materially obstruct navigable
38 waters, and they shall describe by metes and bounds the waters,
39 flats or creeks covered thereby.

1 SECTION 2. Said chapter 130 is hereby further amended by
2 striking out section 58 and inserting in place thereof the following
3 section: —

4 Section 58. Any license granted under section fifty-seven may
5 not be renewed or transferred, except as otherwise provided in
6 section fifty-seven but shall be subject to the bidding procedure
7 set forth in section fifty-seven.

1 SECTION 3. Sections fifty-nine and sixty of said chapter one
2 hundred and thirty are hereby repealed.

1 SECTION 4. Said chapter 130 is hereby further amended by
2 striking out sections 61, 62 and 63 and inserting in place thereof
3 the following three sections: —

4 Section 61. The licensee upon receiving his license shall cause
5 the territory covered thereby to be plainly marked out by monu-
6 ments, marks or ranges and by stakes or buoys, with the number
7 of his license painted in figures at least two inches in height in a
8 conspicuous place on each of said stakes or buoys or on flags
9 attached thereto, which shall be maintained by him during the
10 term of the license. Failure to place or reasonably to maintain the
11 same shall be sufficient cause for revocation of the license.

12 Section 62. The aldermen, city council or selectmen shall keep
13 in their offices plans showing all such licensed areas, and, in a
14 book devoted to that purpose only, a record of each license grant-
15 ed which shall include the name and residence of the licensee, the
16 dates of issue, and a copy of the description of the licensed areas
17 as the same appears in the license. Each license shall forthwith
18 after the granting thereof be transmitted by the board so granting
19 the same to the city or town clerk, who shall record the same in a
20 book kept especially therefor in his office. The licensee shall, in
21 addition to any sums set forth in the bid, within thirty days after
22 such issue or approval pay to said clerk for each license issued
23 one dollar for such recording and for each license issued shall also
24 pay four dollars as reimbursement of said city or town for the cost
25 incurred in granting said license, a record of which payment shall
26 forthwith be entered upon said record by said clerk, and such
27 license shall not take effect until said fees are paid and entry
28 thereof made as aforesaid. Said records shall be open to public
29 inspection at all reasonable times. Forms for such license shall be
30 provided by the aldermen, city council or selectmen at the
31 expense of their city or town.

32 Section 63. The licensee, or his legal representatives, shall, for
33 the purposes set forth in section fifty-seven and in accord with the
34 terms set forth in said license, have during the term of the license
35 the executive use of the waters, flats or creeks described in the
36 license, and the exclusive right to take all shellfish therefrom dur-
37 ing the time therein specified, notwithstanding any regulations
38 made by the aldermen, city council or selectmen of the city or
39 town, subsequent to the issuance of such license; provided, that
40 this section shall not be construed to authorize any taking prohib-
41 ited by law. The licensee or his legal representatives, may in tort
42 recover treble damages of any person who without his consent,
43 unless otherwise authorized by law or by lawful regulation so to
44 do, digs or takes shellfish of any kind, or shells, from such waters,
45 flats or creeks, or disturbs the same thereon, during the continu-
46 ance of the license.

1 SECTION 5. Section sixty-four of said chapter one hundred
2 and thirty is hereby repealed.

1 SECTION 6. Section 65 of said chapter 130, as appearing in
2 the 1990 Official Edition, is hereby amended by striking out, in
3 line 1, the following words: — or transferee.

1 SECTION 7. Section 67 of said chapter 130, as so appearing,
2 is hereby amended by striking out, in lines 8 and 12 and 13 the
3 following words: — or transferee, as the case may be.

1 SECTION 8. Section 68 of said chapter 130, as so appearing,
2 is hereby amended by striking out in lines 5 and 10 the following
3 words: — or transferee.