

HOUSE No. 4422

By Mr. Straus of Mattapoisett, for the committee on Environment, Natural Resources and Agriculture, on Senate, No. 396 and House, No. 3438, a Bill to protect the natural resources of the Commonwealth (House, No. 4422). January 6, 2010.

The Commonwealth of Massachusetts

—
In the Year Two Thousand Ten
—

An Act to protect the natural resources 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 SECTION 1. The General Laws are hereby amended by inserting after chapter 132B the
2 following chapter:- CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT. Section 1. It is
3 hereby declared to be the policy of the commonwealth that lands or easements taken or acquired
4 for natural resource purposes, consistent with Article 97, are a vital and indispensable public
5 natural resource and, therefore, that there shall be no net loss of public lands or easements taken
6 or acquired for natural resource purposes as a result of disposition or change in use of these
7 lands. Section 2. Definitions. As used in this chapter, the following words shall have the
8 following meanings: - "Alternatives analysis", a description of alternatives to a proposed
9 disposition or change in use of lands or easements protected under Article 97, including, but not
10 limited to an analysis of the most reasonable alternative (other than taking no action) that does
11 not require a disposition or change in use under Article 97; the description of an alternative shall
12 include analysis of cost, impact on current use and environmental impact. "Article 97", Article
13 XLIX, as appearing in Article XCVII, of the Amendments to the Constitution. "Article 97 lands

14 or easements”, lands or easements taken or acquired for natural resource purposes under Article
15 97. “Change in use” or “used for other purposes”, a diversion of Article 97 lands or easements,
16 or portion thereof, from existing use. “Disposition”, “dispose” or “disposed”, the transfer of
17 physical or legal custody or control of lands or easements, or a portion thereof, by conveying,
18 relinquishing, leasing for any term, granting of interests in, or transferring by any other means
19 physical or legal custody or control, regardless of whether the transfer is for the same or different
20 uses, or for consistent or inconsistent purposes. “Lands or easements”, lands; easements;
21 conservation restrictions, agricultural preservation restrictions and watershed preservation
22 restrictions, as defined in section 31 of chapter 184; and other restrictions or conditions
23 contained in a deed, grant or other instrument purporting to transfer or convey an interest in land,
24 regardless of the term of such easements, restrictions or conditions. “Natural resource purposes”,
25 the purposes described in Article 97. “Owner”, the commonwealth department, agency,
26 authority, public instrumentality, town, municipality or political subdivision that owns or has
27 care, custody or control of the lands or easements for which there is a proposed disposition or
28 change in use. “Replacement land”, lands or easements acquired by the owner that are of equal
29 or greater area, market value and natural resource value and of comparable location and use, as
30 compared with the Article 97 lands or easements being disposed of or used for other purposes;
31 lands or easements already protected under Article 97 shall not qualify as replacement land.
32 “Taken or acquired”, obtained by gift, purchase, devise, grant, exchange, lease, taking by
33 eminent domain or otherwise, by the commonwealth, any of its political subdivisions or bodies
34 politic, or any instrumentality thereof, or through use of public funds, including land bank funds.
35 Section 3. It shall be the policy of the general court not to enact legislation to allow a disposition
36 or change in use of lands or easements taken or acquired for natural resource purposes under

37 Article 97, unless the owner of the lands or easements provides the general court the following:-
38 (a) a statement from the secretary of energy and environmental affairs as to whether the lands or
39 easements are classified as Article 97 lands or easements; (b) a metes and bounds description of
40 the lands or easements; (c) a copy of the deed conveying the lands or easements to the present
41 owner; (d) a statement of the market value, as defined in 12 CFR 323.2(g), of the lands or
42 easements that is substantiated by an appraisal, as defined in 12 CFR 323.2(a), which meets the
43 minimum appraisal standards set forth in 12 CFR 323.4 and which is prepared by a state
44 certified or state licensed appraiser, as defined in 12 CFR 323.2(j)-(k); (e) copies of statutorily
45 required approvals by the governing body or officer of the owner, approving the disposition or
46 change in use of the lands or easements and the acquisition of replacement land, including, if
47 applicable, copies of required approvals by the local conservation commission, which shall have
48 been obtained prior to approval by the governing body or officer; (f) an alternatives analysis
49 approved by the secretary of energy and environmental affairs; (g) a metes and bounds
50 description of the replacement land; (h) a copy of a signed offer, signed purchase and sale
51 agreement, fully executed lease, deed or other legal documents for the conveyance of the
52 replacement land; (i) a statement of the market value, as defined in 12 CFR 323.2(g), of the
53 replacement land that is substantiated by an appraisal, as defined in 12 CFR 323.2(a), which
54 meets the minimum appraisal standards set forth in 12 CFR 323.4, and which is prepared by a
55 state certified or state licensed appraiser, as defined in 12 CFR 323.2(j)-(k); (j) a statement
56 from the secretary of energy and environmental affairs that the proposed replacement land meets
57 the requirements set forth in the definition of replacement land. Section 4. Upon application of
58 the owner, the secretary of energy and environmental affairs may grant a waiver releasing the
59 owner from the replacement land requirements, set forth in sub-sections (g) through (j) of

60 Section 3, conditional upon (a) subsequent to disposition there being no change in use or
61 physical change in the lands or easements disposed other than change due to natural causes; (b)
62 any proposed change in use being temporary and within no more than five years from the change
63 in use the lands or easements reverting to the same state and use as existed immediately prior to
64 the change in use; or (c) the lands or easements proposed for disposition or change in use being
65 occupied by pre-existing buildings or sheds, which may include immediately adjacent land
66 containing out-buildings, paved areas or landscaped areas appurtenant to, necessary for and used
67 solely for said pre-existing buildings or sheds. If a waiver is granted such waiver shall be
68 provided to the general court in lieu of the requirements set forth in sub-sections (g) through (j)
69 of Section 3. Any act authorizing disposition or change in use subject to a waiver under
70 condition (a) or (b) of this section shall require that, if at any time said condition on which the
71 waiver is based ceases to be met, title, jurisdiction, control, and other rights and perquisites
72 disposed shall revert to the owner and the change in use shall become invalid and cease to have
73 statutory approval. Any deed, lease, or other instrument effecting the disposition or change in
74 use shall so stipulate the provisions of this section. Section 5. The joint committee on bonding,
75 capital expenditures and state assets and the joint committee on municipalities and regional
76 government shall each file a report by August 30 of the second year of each legislative session
77 with the clerks of the senate and house of representatives detailing their activities on all bills
78 referred to them that involve dispositions or changes in use of lands or easements taken or
79 acquired for natural resources purposes under Article 97. Section 6. The commonwealth or its
80 agency, authority or instrumentality shall notify the public at least 30 days prior to filing a bill to
81 dispose or change the use of any Article 97 lands or easements. SECTION 2. Within 6 months
82 after the effective date of this act, the secretary of energy and environmental affairs shall develop

- 83 and publish for public review and comment guidelines for conducting an alternatives analysis
- 84 and identifying replacement land and within 1 year after the effective date of this act shall
- 85 publish the guidelines in final form.