

HOUSE No. 4479

Substituted, on motion of Mr. Speliotis of Danvers, for a bill with the same title (House, No. 3894, changed). July 7, 2016.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act authorizing the city of Salem to establish the Salem Harbor Port Authority.

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 city of Salem may establish the Salem Harbor Port Authority,
2 hereinafter referred to as the authority, which shall consist of 5 members: 1 of whom shall be the
3 mayor, who shall serve ex officio; 1 of whom shall be the ward 1 city councilor, who shall serve
4 ex officio; and 3 of whom shall be appointed by the mayor and confirmed by the city council of
5 the city of Salem. Appointments to the authority shall include at least 2 individuals who meet 1
6 of the following qualifications: (i) maintains a membership in the Salem Marine Society; (ii)
7 holds an advanced degree in Marine Transportation or Marine Engineering; (iii) maintains a
8 membership in a Marine Pilot Association; or (iv) equivalent experience or education
9 demonstrating knowledge of port operation or marine transportation.

10 A majority of the members of the authority shall constitute a quorum, and the affirmative
11 vote of a majority of all the members of the authority shall be necessary to adopt any motion,
12 resolution or binding action.

13 SECTION 2. Upon initial appointment by the mayor: 1 appointed member shall serve for
14 a term of 1 year; 1 appointed member shall serve for a term of 2 years; and 1 appointed member
15 shall serve for a term of 3 years. Thereafter and upon expiration of the term of each such
16 member, the mayor shall appoint members of the authority to succeed such appointees whose
17 terms expire and each member so appointed shall hold office for a term of 3 years. Each
18 appointed member shall hold office until his or her successor is appointed and qualified. Any
19 appointed member of the authority shall serve at the pleasure of the mayor and shall be removed
20 by the mayor for misfeasance, malfeasance or neglect of duty. The powers of the authority shall
21 be vested in and exercised by the appointed and ex-officio members of the authority to further
22 the purposes of this act in accordance with all applicable law and for the best interests of the
23 people of the city of Salem, as shall be determined by the authority. Each appointed member of
24 the authority before commencing service shall take an oath before the city clerk to administer the
25 duties of office faithfully and in conformance with applicable law.

26 The vacancy of an appointed member for any reason other than ordinary and usual
27 expiration of term shall be filled by special appointment of the mayor as promptly as possible for
28 the remainder of the unexpired term. No less than 30 days prior to the first meeting of the
29 authority, the mayor shall designate the chairperson whose designation shall be maintained for 1
30 calendar year from the first meeting. Thereafter and no less than 30 days prior to the expiration
31 of said designation, a majority of the authority members present at a meeting of the authority for
32 which a quorum is present may designate the first and each subsequent vice-chairperson from the
33 membership. The mayor shall continue to designate the chairperson. The members shall also
34 elect a secretary, clerk and treasurer, who may or may not be voting members of the authority.

35 Appointed members of the authority may not designate a representative to vote on their
36 behalf. Any appointed member who fails to attend 3 consecutive meeting of the authority or
37 who fails to attend 50 per cent of all officially scheduled meetings of the authority held during
38 any calendar year may be deemed by the mayor to have resigned from the authority, at the
39 mayor's discretion.

40 No member of the authority shall be compensated for their membership, beyond
41 reimbursement for actual and reasonable expenses, if any, incurred in the performance of their
42 duties. Ex-officio members of the authority may continue to receive any usual and customary
43 compensation arising from their official position.

44 The authority, with approval of the mayor, may appoint and may, subject to contractual
45 obligation, remove a paid executive director, who may or may not also serve the city of Salem in
46 an additional professional capacity for additional compensation. The authority shall establish
47 said executive director's contractual obligations and powers, which shall include adhering to the
48 provisions of this act. Subject to the supervision and control of the authority, said executive
49 director shall be the chief operating officer of the authority. Said executive director shall attend
50 all public meetings of the authority but shall have no vote thereon. Said executive director may
51 hire and terminate additional staff and consultants, within a budget approved by the authority.
52 The duration of any executive director employment contract shall not exceed 3 years but may be
53 extended any number of times.

54 SECTION 3. The Salem Harbor Port Authority shall have the duty, power and authority
55 generally to coordinate port development within Salem Harbor and the Harbor Port Area, as
56 defined in section 4, and shall cause plans to be made for the development and operation of the

57 Harbor Port Area for the benefit primarily of the public interest of the city of Salem, with a focus
58 on: (i) enhancing private and public revenues and investments; (ii) pursuit of and readiness to
59 obtain or receive private and public funds for any and all port infrastructure improvements,
60 including but not limited to, dredging; and (iii) increasing the operational and economic capacity
61 of the Harbor Port Area. The authority shall be granted and may delegate operational control of
62 any and all land, piers, docks, and other structures and facilities now owned or operated by the
63 city or conveyed to the city, in whole or in part such as by deed, easement, license or shared
64 operational controls, in the Harbor Port Area. Notwithstanding the foregoing, to the extent
65 necessary to comply with applicable law or contract, but not limited to, any pending inter-
66 governmental agreements or bonding obligations of the city of Salem and existing management
67 of land, piers, docks, and other structures in the Harbor Port Area shall remain in effect until
68 such time as any legal or contractual obligations for their management expires or otherwise
69 ceases to remain in effect. During any such period, to the maximum extent legally feasible,
70 operational control shall be delegated to the authority.

71 If the authority deems necessary or appropriate, it shall coordinate the planning and
72 funding of capital projects and operational and fee agreements promoting the efficient
73 development and operation of the Harbor Port Area including, but not limited to:

74 (a) developing organizational and management structures that will best accomplish the
75 purposes of the authority;

76 (b) employing assistants, agents, contractors, consultants and employees as may be
77 deemed necessary or desirable by the authority to undertake its duties and responsibilities;

78 (c) receiving and accepting aid or contributions, from any source of money, property,
79 labor or other things of value, to be held, used and applied to carry out the duties, powers and
80 authorities of this act. Notwithstanding any general or special law to the contrary, the authority
81 may receive donated money, property, labor or other things of value without competitive public
82 bidding for such donation; and

83 (d) investing in, acquiring, leasing, purchasing, owning, managing, holding and disposing
84 of real property interests including, but not limited to, interests in the land, piers, docks, and
85 other structures in the Harbor Port Area. Any such real property interests remain subject to all
86 applicable state, local and federal laws, except as specified in this act.

87 With the approval of the mayor and city council, to further the purposes of this act, the
88 Authority may take by eminent domain any land or interest in land within the Harbor Port Area.
89 The price paid for any such land or interest in land shall not exceed fair market value as
90 reasonably determined by the authority at the time of such taking. All proceedings in the taking
91 of land shall be conducted under the advice of the city solicitor of the city of Salem, who shall
92 keep a record of such proceedings.

93 SECTION 4. The Harbor Port Area shall include, but not be limited to, the land and
94 appurtenances at 10 Blaney street, in the city of Salem, the buildings and improvements thereon
95 and the Salem Ferry, known as the Nathaniel Bowditch.

96 SECTION 5. The operations of the authority shall be conducted in a manner to promote
97 and encourage the use of Salem Harbor to the fullest extent possible in an environmentally and
98 economically sustainable manner and pursuant to this act, the authority:

99 (a) shall procure insurance against any liability or loss in connection with its property
100 interests and other assets or obligations, in such amounts and from such insurers as it deems
101 necessary or appropriate and to procure insurance for employees and authority members as it
102 deems necessary or appropriate. The authority shall at all times maintain adequate and
103 reasonable insurance for its members and any agents hired by or acting on behalf of the
104 authority, as well as adequate and reasonable property and liability insurance;

105 (b) may borrow money or secure credit on a temporary, short-term, interim or long-term
106 basis. Subject to its usual and applicable authority, the city of Salem may also borrow and issue
107 bonds or notes of the city for the purposes of the authority in addition to the purposes specified in
108 section 7 of chapter 44 of the General Laws;

109 (c) may sue and be sued in its own name, and plead and be impleaded, but
110 notwithstanding any special or general law to the contrary, shall not be liable for punitive
111 damages; and

112 (d) may make and enter into contracts and agreements necessary or incidental to the
113 performance of its duties and the execution of the powers granted by this act, including, but not
114 limited to, the granting of leasehold interests, concessions, access and development rights and
115 privileges, supplier, vendor, contractor and consultant contracts.

116 SECTION 6. In the event there is an excess of income received by the authority over
117 current expenses and liabilities, all such amounts shall be retained by the authority for execution
118 of the purposes stated in this act, including but not limited to, maintaining reserves or
119 enhancement of credit worthiness, and shall not be diverted to other funds or used for purposes

120 outside this act. Excess of income received over current expenses and liabilities shall be
121 determined at least annually, with a certified public audit at least every 3 years.

122 SECTION 7. The authority shall be a public instrumentality for purposes of this act, shall
123 have an official seal and may alter the same at its discretion.

124 SECTION 8. The authority may apply for, receive, accept and spend any federal or state
125 agency grants or loans for, or in aid of, its purposes, including but not limited to, public works.
126 The authority may receive and accept contributions from any source of money, property, labor or
127 any other thing of value, to be held, used and applied only for the purposes of this act, and may
128 do all acts and things necessary or convenient to carry out the powers granted or implied by this
129 act.

130 SECTION 9. This act shall take effect upon its passage.