

HOUSE No. 4990

The Commonwealth of Massachusetts

PRESENTED BY:

David T. Vieira

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the Bourne Recreation Authority.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David T. Vieira</i>	<i>3rd Barnstable</i>	<i>11/26/2018</i>
<i>Viriato M. deMacedo</i>	<i>Plymouth and Barnstable</i>	<i>12/5/2018</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>	<i>11/27/2018</i>

HOUSE No. 4990

By Mr. Vieira of Falmouth, a petition (accompanied by bill, House, No. 4990) of David T. Vieira, Viriato M. deMacedo and Randy Hunt (by vote of the town) relative to the Bourne Recreation Authority. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to the Bourne Recreation 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. Chapter 820 of the Acts of 1970 is hereby amended by striking out sections
2 1 to 12 inclusive, and inserting in place thereof the following 11 sections: -

3 Section 1. The Authority created by section 2 of this act is hereby authorized to acquire
4 by purchase, lease or otherwise, land with or with-out buildings thereon within the boundaries of
5 the town of Bourne and to manage and control land presently or to be leased by the town of
6 Bourne from the federal government, known as the Bourne Scenic Park, including all buildit1:gs
7 and facilities thereon, and to construct, maintain and operate an arena for the purpose of
8 providing an indoor hockey and skating rink and other indoor and outdoor recreational facilities
9 for use primarily by individuals, and school and amateur teams, in the town of Bourne; provided,
10 however, that at such other times as there is no substantial demand for the use of such arena or
11 any part thereof as such a rink, the Authority may permit the use of such arena or part thereof for
12 Other purposes as provided in this act.

13 Section 2. There is hereby created a public body politic and corporate to be known as the
14 Bourne Recreation Authority, hereinafter called the Authority, which is hereby constituted a
15 public instrumentality; and the exercise by the Authority of the powers conferred by this act
16 shall be deemed and held to be the performance of essential governmental functions and the
17 Authority shall not be held liable for any injury, loss or damage suffered by any person or
18 property by reason of any ordinary or gross negligence of the Authority or any of its officers,
19 employees or agents. The Authority shall consist of 5 members: 1 of whom shall be appointed by
20 the governor and 4 of whom shall be elected by the town of Bourne and shall serve for 3 years.
21 Membership in the Bourne Recreation Authority shall be restricted to residents of the town of
22 Bourne. Thereafter, as a term of a member of the Authority expires, their successor shall be
23 appointed or elected, in the same manner and by the same body, for the term of 3 years.
24 Vacancies, other than by reason of expiration of terms, shall be filled for the balance of the

25
26 unexpired term, in the same manner and by the same body, except elected members
27 whose term shall be filled in accordance with the provisions of section 11 of chapter 41 of the
28 General Laws, as amended. Every member, unless sooner removed, shall serve until the
29 qualifications of their successor. A member who ceases to be a resident of the town of Bourne
30 shall be removed upon the date of their change of residence by operation of law.

31 Within 30 days of the election of the members of the Authority the members shall meet in
32 a public place for the purpose of electing a chairman and a vice-chairman and a clerk. Three
33 members of the Authority shall constitute a quorum; and a vote of 3 members shall be necessary

34 for any action taken by the Authority. No vacancy in the membership of the Authority shall
35 impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

36 The members of the Authority shall serve without compensation, but shall be reimbursed
37 for expenses necessarily incurred in the performance of their duties. Every member of the
38 Authority shall execute a surety bond in the penal sum of \$20,000, and the administrative
39 coordinator and the treasurer shall execute bonds in the penal sum of \$50,000, each such surety
40 bond to be conditioned upon the faithful performance of the duties of their office to be executed
41 by a surety company authorized to transact business in the commonwealth as surety, and to be
42 approved by the attorney general and filed in the office of the state secretary.

43 The board of selectmen may make, or the board of selectmen may receive, written
44 charges against, and may, after hearing, remove, because of any inefficiency, neglect of duty and
45 misconduct in office, or any of such causes, a member of the Authority elected by the town;
46 provided that such members shall have been given, not less than 14 days before the date for such
47 hearings, a copy in writing of the charges against them and written notice of the date and place of
48 the hearing to be held thereon, and at the hearing shall have been given the opportunity to be
49 represented by counsel and to be heard in their own defense. Pending final action upon such
50 charges, the board of selectmen may temporarily suspend such member; provided, that if they
51 find that such charges have not been substantiated,

52

53 they shall immediately reinstate such member in their office. In case of any such removal,
54 the selectmen shall forthwith deliver to the town clerk, for filing with the certificate and with the
55 duplicate certificate, attested copies of such charges and of their finding thereon.

56 The board of selectmen may refer to the governor written charges of any inefficiency,
57 neglect of duty and misconduct in office, or any such charges, against the member of the
58 Authority appointed by the governor, and in which case the pertinent provisions of the preceding
59 paragraph relative to notice, hearing, suspension, removal or reinstatement, in filing, shall apply
60 to the proceedings before the governor. If, after hearing thereon, the governor finds the charges,
61 or any of them, to have been substantiated, and that removal of the member is advisable, the
62 governor shall remove such member.

63 Section 3. The Authority is hereby authorized and empowered:

64 (a) To adopt by-laws for the regulation of its affairs and the conduct of its business;

65 (b) To adopt an official seal and alter the same at pleasure;

66 (c) To sue and be sued, and to plead and be impleaded, in its own name;

67 (d) To acquire, lease, hold and dispose of real and personal property, and to construct
68 on property so acquired, leased or held, an arena and

69 / or other recreational facilities, in the exercise of its powers and the performance of its
70 duties under this act;

71 (e) To insure, maintain, repair and improve such arena and / or recreational facilities
72 and operate the same as an indoor hockey and skating rink, basketball courts, baseball diamond,
73 swimming pools, and other sporting and recreational activities for use primarily by individuals,
74 and school and amateur teams, in the town of Bourne, but not to the full exclusion of other
75 individuals or teams or of skating exhibitions or championship hockey matches, basketball
76 games, or other sporting matches or meets or the like, and at such other times as

77

78 there is no substantial demands for the use of such arena or any part thereof as such a rink
79 or other like use, to permit the use of such arena or part thereof for such school and civic
80 athletics and physical education and for such educational, recreational, social, civic,
81 philanthropic and similar purposes as the Authority may deem to be for the interest of the people
82 of said town; or, if there is no substantial demands for such use of such arena or part thereof, to
83 permit the use of such arena or part thereof for commercial purposes; provided,

84 however, that any land leased by the federal government to the Authority for recreational
85 purposes shall be made available to the general public without discrimination in any form;

86 (f) To provide through its employees, or by the grant of 1 or more concessions, or in
87 part through its employees and in part by the grant of 1 or more concessions, for the furnishing
88 of services and things for the accommodation of persons admitted to or using such arena or any
89 part thereof;

90 (g) To establish rules and regulations, and fix policies, for the use of such arena
91 and/or recreational facilities, as an indoor hockey and skating rink, basketball court, swimming
92 pool, tennis court and facilities for other sporting activities and for the other purposes provided
93 for in this act;

94 (h) To fix from time to time and charge and collect fees for admission to, or the use
95 or occupancy of, such arena or any part thereof, and for the grant of concessions therein and for
96 things furnished, or services rendered, by the Authority; and

97 (i) To make all contracts and agreements necessary or incidental to the performance
98 of its duties and the execution of its powers under this act, to employ a general manager and such
99 other employees and agents as may be necessary in its judgment, and to fix their compensation,
100 and to do all acts and things necessary or convenient to carry out the powers expressly granted in
101 this act.

102 The Authority shall fix such fees under clause (h) as in its judgment are best adapted to
103 insure sufficient income to meet the expenses of the Authority,

104

105 including the payments into the debt service reserve fund required by section 10 of this
106 act. Any fee assessed by the Authority for use of recreational facilities on land leased by the
107 federal government to the Authority shall require prior approval of the Secretary of the Army or
108 his duly authorized representative.

109 Section 4. Expenses, liabilities and obligations incurred in carrying out the provisions of
110 this act shall not constitute a debt of the commonwealth or a pledge of the faith and credit of the
111 commonwealth; and no expense, liability or obligation shall be incurred by the Authority under
112 this act beyond the extent to which monies shall have been provided under the provisions of this
113 act. Any member, agent or employee of the Authority who contracts with the Authority or is
114 interested, either directly or indirectly, in any contract with the Authority shall be punished by a
115 fine of not more than

116 \$1,000 or by imprisonment for not more than I year, or both.

117 Section 5. The Authority and all its real and personal property shall be exempt from
118 taxation and from betterments and special assessments; and the Authority shall not be required to
119 pay any tax, excise or assessment to or for the commonwealth or any of its political subdivisions;
120 nor shall the Authority be required to pay any fee or charge for any permit or license issued to it
121 by the commonwealth, by any department, a board or officer thereof, or by any political
122 subdivision of the commonwealth , or by any department, board or officer of such political
123 subdivision.

124 Section 6. On or before the fifteenth day of September in each year, the Authority shall
125 make an annual report of its activities for the preceding fiscal year to the board of selectmen of
126 the town of Bourne and to the division engineer of the United States Army Corps of Engineers,
127 New England Division, as specified in any lease of government property to the Authority. Said
128 selectmen shall cause the report to be printed in the Annual Town Report of the town of Bourne.
129 Each such report shall set forth a complete operating and financial statement covering its
130 operations during such year. The Authority shall cause an audit of its books to be made by the
131 state auditor; and the cost thereof shall be treated as part of the cost of operating such arena and
132 other recreational facilities. Such audits shall be

133

134 deemed to be public records within the meaning of 66 of the General Laws.

135 Section 7. The Authority is hereby authorized to provide by resolution, at I time or from
136 time to time, for the issuance of bonds or notes of the Authority for the purpose of paying all or
137 any part of the cost of capital projects of the Authority, including the payment of costs incidental
138 or related thereto. The principal and interest of such bonds shall be payable solely from the funds

139 herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at
140 such rates of interest as determined by the Authority, shall mature at such time or times not
141 exceeding 40 years from their date or dates as may be determined by the Authority, and may be
142 made redeemable before maturity at the option of the Authority, at such price or prices and under
143 such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds.
144 The Authority shall determine the form of the bonds, including any interest coupons to be
145 attached thereto, and the manner of execution of the bonds, and shall fix the denomination or
146 denominations of the bonds and the place or places of payment of principal and interest, which
147 may be at any bank or trust company. In case any officer whose signature or a facsimile of
148 whose signature shall appear on any bonds or coupons shall cease to be such officer before the
149 delivery of such bonds,

150 such signature or such facsimile shall nevertheless be valid and sufficient for all
151 purposes the same as if said officer had remained in office until such delivery. All bonds issued
152 under the provisions of this act shall have and are hereby declared to have all the qualities and
153 incidents of negotiable instruments under the Uniform Commercial Code. The bonds may be
154 issued in coupon or in registered form, or both, as the Authority may determine, and provision
155 may be made for the registration of any coupon bonds as to principal alone, and also as to both
156 principal and interest, and for the reconversion into coupon bonds of any bonds registered as to
157 both principal and interest. The Authority may sell such bonds in such manner, either at public or
158 at private sale, and for such price, as it may determine to be for the best interest of the Authority.

159 The proceeds of such bonds shall be used solely for the payment of the cost of capital
160 projects of the Authority, including the payment of costs

161

162 incidental or related thereto, and shall be disbursed in such manner and under such
163 restrictions, if any, as the Authority may provide. If the proceeds of such bonds, by error of
164 estimates or otherwise, shall be less than such cost, additional bonds may in like manner be
165 issued to provide the amount of such deficit, and, unless otherwise provided in the resolution
166 authorizing the issuance of the bonds, shall be deemed to be of the same issue and shall be
167 entitled to payment from the same fund without preference or priority of the bonds first issued. If
168 the proceeds of the bonds shall exceed the cost of the project, the surplus shall be used for the
169 retirement of such bonds. Prior to the preparation of definitive bonds, the Authority may issue
170 temporary notes in anticipation of bonds at such rates or rates under such terms and in such form
171 as approved by the Authority. The Authority may also provide for the replacement of any bonds
172 which shall become mutilated or shall be destroyed or lost. Bonds and temporary notes may be
173 issued by the Authority under the provisions of this act without obtaining the consent of
174 any department, division, commission, board, bureau or agency of the
175 commonwealth, and without any other proceedings or the happening of any other
176 conditions or things than those proceedings, conditions or things which are specifically required
177 by this act.

178 The Authority is hereby authorized to provide by resolution for the issuance of refunding
179 bonds of the Authority for the purpose of refunding any bonds that are outstanding and issued
180 under the provisions of this act, including payment of any redemption premium thereon and any
181 interest accrued or to accrue to the date of redemption of such bonds. The issuance of such

182 bonds, the maturities and other details thereof, and the duties of the Authority in respect to the
183 same, shall be governed by the provisions of this act in so far as the same may be applicable.

184 While any bonds issued by the Authority remain outstanding, the powers, duties or
185 existence of the Authority shall not be diminished or impaired in any way that will affect
186 adversely the interests and rights of the holders of such bonds.

187 Section 8. The Authority may enter into agreements with the federal government relative
188 to the acceptance or borrowing of funds for any

189

190 recreational project, or facility for sporting activities, or containing such other covenants,
191 terms and conditions as the Authority may deem desirable. The Authority may enter into a
192 contract with the federal government for purchasing or leasing land or land and buildings owned
193 or controlled by the federal government. If such a project has been so leased by the Authority, or
194 leased by the town and assumed by the Authority from the town, and such Authority has by vote
195 declared that the buildings of the project have been constructed in a manner that will afford
196 necessary safety, sanitation and protection in other respects to the public, no changes shall be
197 required by any officers of the commonwealth or of the town of Bourne in the manner of
198 construction, or the buildings, the fixtures or appurtenances thereto or the use for which the
199 project was designed.

200 Section 8A. If the Authority leases noncontiguous parcels of land from the federal
201 government upon which it constructs and maintains recreation facilities, any surplus of funds
202 over and above operating expenses may be used for the maintenance and operation of the

203 recreational facilities on any other noncontiguous areas under lease from the federal government
204 in said town.

205 Section 9. The Authority may obligate itself in any contract with the federal government
206 for a loan or the payment of annual contributions under the Outdoor Recreation Financial
207 Assistance Law or other similar federal legislation, to convey to the federal government the
208 project to which such contract relates, upon the occurrence of a substantial default with respect to
209 the covenants, terms and conditions of such contract to which the Authority is subject. Such
210 contract may further provide that, in case of such conveyance, the federal government may
211 complete, operate, manage, lease, convey or otherwise deal with the project in accordance with
212 the terms of such contract; provided that the contract shall require that, as soon as practicable
213 after the federal government is satisfied that all of the defaults on account of which it acquired
214 the project have been remedied, and that the project will thereafter be operated in compliance
215 with the terms of the contract, the federal government shall reconvey to the Authority the project
216 in the condition in which it then exists. The obligation of the Authority

217

218 under this contract shall be subject to specific enforcement by any court having
219 jurisdiction and, notwithstanding any other provision of law, shall not be deemed to constitute a
220 mortgage.

221 Section 10. For the purpose of paying the costs of capital projects of the Authority within
222 the town of Bourne owned or leased by the Authority, or to be owned or leased by the Authority,
223 and costs incidental or related thereto, the treasurer of the town of Bourne may, with the approval

224 of the board of selectmen, borrow from time to time such sums as may be authorized by the town
225 of Bourne for such purposes for a period not to exceed 20 years.

226 Indebtedness incurred under this act shall be in excess of the statutory limit but shall,
227 except as provided herein be subject to chapter 44 of the General Laws, exclusive of any
228 limitation contained in section 7 thereof.

229 The town of Bourne may accept state and federal aid for the purposes of this act, and in
230 so doing may agree to be bound by any terms, conditions or restrictions which may be imposed
231 in connection therewith.

232 The custody, control and management of the arena and any other recreational facilities,
233 including equipment and furnishings, or capital projects of the Authority financed by the town of
234 Bourne pursuant to this act shall be in the board of selectmen, acting on behalf of the town of
235 Bourne.

236 The Authority shall pay to the town of Bourne prior to the date when any principal or
237 interest on bonds or notes issued by the town under this act becomes due, an amount sufficient to
238 cover such debt service.

239 As long as any bonds or notes of the town of Bourne issued pursuant to this act are
240 outstanding, all fees collected by the Authority, except such part thereof as may be necessary to
241 pay current maintenance, repair, administrative and operating expenses, and debt service
242 required by the prior paragraph, shall be paid into a debt service reserve fund which is hereby
243 charged with, but not pledged to, the payment of the principal and the interest on such bonds or
244 notes as the same shall fall due in the event other receipts of the Authority are not sufficient for

245 the purpose; provided, however, that any such bonds or notes shall be general obligations of the
246 town, and in the event that funds raised by the Authority shall be

247

248 insufficient to pay the principal thereof and interest thereon, the town shall have the
249 power to levy unlimited ad valorem taxes on all taxable property in the town to pay such
250 principal and interest. Said fund shall be held in the custody of the treasurer of the town of
251 Bomne, separate from all other funds. No payment shall be required into the debt service reserve
252 fund when it equals or exceeds the largest amount of interest and principal of such bonds or
253 notes payable in the current or any single subsequent year.

254 Section 11. The Authority shall, in awarding contracts for the construction of a building
255 or construction work on a building, be subject to the provisions of sections 26 to 27-D, inclusive,
256 and sections 44A to 44L, inclusive, of chapter 149 of the General Laws, and sections 39J and
257 39K of chapter 30 of the General Laws, chapter 149A of the General Laws, and chapter 7C of
258 the General Laws.

259 SECTION 2. This act shall take effect upon its passage.