

HOUSE No. 2759

The Commonwealth of Massachusetts

PRESENTED BY:

Chris Walsh

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 increasing public access to abandoned rights of way and conservation easements.

PETITION OF:

NAME:

Chris Walsh

DISTRICT/ADDRESS:

6th Middlesex

HOUSE No. 2759

By Mr. Walsh of Framingham, a petition (accompanied by bill, House, No. 2759) of Chris Walsh for legislation to authorize municipalities to levy real estate taxes on certain abandoned property and provide incentives for granting public access to said property. Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An act increasing public access to abandoned rights of way and conservation easements.

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. Purpose. The purpose of this Act is to increase public access to public and
2 quasi-public land by acquiring abandoned property, specifically public utility land, and private
3 property willfully donated through conservation easements and restrictions. To accomplish this
4 purpose, this Act establishes a municipal taxing mechanism granting a city or town the power to
5 levy a real estate tax on public utility company that has abandoned a public utility site prompting
6 said company to open the land to the public through the granting of a public right of way,
7 increases the powers of the Department of Conservation stewardship council, amends the
8 requirements for obtaining conservation easements, and creates a conservation tax credit.

9 SECTION 2. The General Laws are hereby amended by inserting after section 94 of
10 chapter 59 the following section: SECTION 95. MUNICIPAL TAXING MECHANISM.

11 Section 95. (a) All public utilities, including but not limited to power, transportation,
12 water and sewer public utility companies, which are considered abandoned as defined by this
13 section shall be subject to a municipal real estate tax until such a time that the utility company
14 grants an easement or right of way to the public for general access, including and not limited to
15 recreational use.

16 (b) A public utility company shall be defined as “abandoned” if the parcel of land has
17 been vacated and no longer benefits the public as an operational public utility site for a period of
18 at least ten years.

19 (c) The rate of taxation shall be determined by the board of assessors of each city or town
20 in which such land is situated.

21 SECTION 3. Section 2 of chapter 21 of the General Laws is hereby amended by inserting
22 after the first paragraph the following paragraph:-

23 The stewardship council shall have the power to acquire and receive easements,
24 specifically easements acquired to serve as rights of way for utilities including but not limited to
25 power, transportation, water and sewer utilities, directly from a land or easement owner to
26 further the purposes established in Section 1 of this chapter.

27 SECTION 4. Section 31 of chapter 184 of the General Laws is hereby amended by
28 inserting “to permit public recreational use”, in the first sentence, the following words:- and
29 allowing sufficient public access.....

30 SECTION 5. Section 32 of chapter 184 of the General Laws is hereby amended by
31 inserting after the fifth paragraph the following sentence:-

32 Consideration for granting a conservation restriction shall be most favorably weighed for
33 restrictions which grant increased public access for the benefit of the public interest.

34 SECTION 6. Said chapter 63 is hereby amended by inserting after section 38CC the
35 following section:-

36 Section 38DD. The Department of Conservation and Recreation shall develop a
37 nonregulatory program modifying chapters 58 through 65C of the General Laws that uses
38 conservation tax credits as a prominent tool to accomplish conservation purposes, particularly for
39 the purpose of granting increased public access to land throughout the Commonwealth.

40 Any legal person that makes a qualified donation of an interest in real property located in
41 the Commonwealth during the taxable year that is useful for (i) public beach access or use, (ii)
42 public access to public waters or trails, (iii) fish and wildlife conservation, (iv) forestland or
43 farmland conservation, (v) watershed protection, (vi) conservation of natural areas, (vii)
44 conservation of natural or scenic river areas, (viii) conservation of predominantly natural
45 parkland, or (ix) historic landscape conservation is allowed a credit against any tax imposed by
46 this Part equal to 25 percent of the fair market value of the donated property interest.

47 To be eligible for this credit, the interest in real property must be donated in perpetuity
48 for one of the qualifying uses listed in this section and accepted in perpetuity for the qualifying
49 use for which the property is donated. The person to whom the property is donated must be the
50 Commonwealth, a local government, or a body that is both organized to receive and administer
51 lands for conservation purposes and qualified to receive charitable contributions.

52 The credit allowed under this section for one or more qualified donations made in a
53 taxable year may not exceed \$500,000. The credit allowed by this section may not exceed the
54 amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed,
55 except payments of tax made by or on behalf of the taxpayer. Any unused portion of this credit

56 may be carried forward for the next succeeding five years. Application shall be submitted to the
57 board of assessors of each city or town in which such land is situated for which such valuation,
58 assessment and taxation is being sought. Application shall be made on a form prescribed by the
59 commissioner of revenue and provided for the use of applicants by said board of assessors.

60 SECTION 7. Section 1 of chapter 61B of the General Laws is hereby amended by
61 inserting after the first paragraph the following sentence:-

62 Land on which the owner grants an easement for a trail open to public use is
63 automatically deemed to be recreational land for the purposes of chapter 61B.