

**HOUSE . . . . . No. 3438**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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:-

3 CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT.

4 Section 1. It is hereby declared to be the policy of the commonwealth that lands or  
5 easements taken or acquired for natural resource purposes, consistent with Article 97, are a vital  
6 and indispensable public natural resource and, therefore, that there shall be no net loss of public  
7 lands or easements taken or acquired for natural resource purposes as a result of disposition or  
8 change in use of these lands.

9 Section 2. Definitions. As used in this chapter, the following words shall have the  
10 following meanings: -

11 "Alternatives analysis", a description of alternatives to a proposed disposition or change  
12 in use of lands or easements protected under Article 97, including, but not limited to an analysis  
13 of the most reasonable alternative (other than taking no action) that does not require a disposition

14 or change in use under Article 97; the description of an alternative shall include analysis of cost,  
15 impact on current use and environmental impact.

16 “Article 97”, Article XLIX, as appearing in Article XCVII, of the Amendments to the  
17 Constitution.

18 “Article 97 lands or easements”, lands or easements taken or acquired for natural  
19 resource purposes under Article 97.

20 “Change in use” or “used for other purposes”, a diversion of Article 97 lands or  
21 easements, or portion thereof, from existing use.

22 “Disposition”, "dispose" or “disposed”, the transfer of physical or legal custody or  
23 control of lands or easements, or a portion thereof, by conveying, relinquishing, leasing for any  
24 term, granting of interests in, or transferring by any other means physical or legal custody or  
25 control, regardless of whether the transfer is for the same or different uses, or for consistent or  
26 inconsistent purposes.

27 “Lands or easements”, lands; easements; conservation restrictions, agricultural  
28 preservation restrictions and watershed preservation restrictions, as defined in section 31 of  
29 chapter 184; and other restrictions or conditions contained in a deed, grant or other instrument  
30 purporting to transfer or convey an interest in land, regardless of the term of such easements,  
31 restrictions or conditions.

32 “Natural resource purposes”, the purposes described in Article 97.

33 “Owner”, the commonwealth department, agency, authority, public instrumentality, town,  
34 municipality or political subdivision that owns or has care, custody or control of the lands or  
35 easements for which there is a proposed disposition or change in use.

36 “Replacement land”, lands or easements acquired by the owner that are of equal or  
37 greater area, market value and natural resource value and of comparable location and use, as  
38 compared with the Article 97 lands or easements being disposed of or used for other purposes;  
39 lands or easements already protected under Article 97 shall not qualify as replacement land.

40 “Taken or acquired”, obtained by gift, purchase, devise, grant, exchange, lease, taking by  
41 eminent domain or otherwise, by the commonwealth, any of its political subdivisions or bodies  
42 politic, or any instrumentality thereof, or through use of public funds, including land bank funds.

43 Section 3. It shall be the policy of the general court not to ,enact legislation to allow a  
44 disposition or change in use of lands or easements taken or acquired for natural resource  
45 purposes under Article 97, unless the owner of the lands or easements provides the general court  
46 the following:-

47 (a) a statement from the secretary of energy and environmental affairs as to whether the  
48 lands or easements are classified as Article 97 lands or easements;

49 (b) a metes and bounds description of the lands or easements;

50 (c) a copy of the deed conveying the lands or easements to the present owner;

51 (d) a statement of the market value, as defined in 12 CFR 323.2(g), of the lands or  
52 easements that is substantiated by an appraisal, as defined in 12 CFR 323.2(a), which meets the

53 minimum appraisal standards set forth in 12 CFR 323.4 and which is prepared by a state  
54 certified or state licensed appraiser, as defined in 12 CFR 323.2(j)-(k);

55 (e) copies of statutorily required approvals by the governing body or officer of the owner,  
56 approving the disposition or change in use of the lands or easements and the acquisition of  
57 replacement land, including, if applicable, copies of required approvals by the local conservation  
58 commission, which shall have been obtained prior to approval by the governing body or officer;

59 (f) an alternatives analysis approved by the secretary of energy and environmental  
60 affairs;

61 (g) a metes and bounds description of the replacement land;

62 (h) a copy of a signed offer, signed purchase and sale agreement, fully executed lease,  
63 deed or other legal documents for the conveyance of the replacement land;

64 (i) a statement of the market value, as defined in 12 CFR 323.2(g), of the replacement  
65 land that is substantiated by an appraisal, as defined in 12 CFR 323.2(a), which meets the  
66 minimum appraisal standards set forth in 12 CFR 323.4, and which is prepared by a state  
67 certified or state licensed appraiser, as defined in 12 CFR 323.2(j)-(k);

68 (j) a statement from the secretary of energy and environmental affairs that the proposed  
69 replacement land meets the requirements set forth in the definition of replacement land.

70 Section 4. Upon application of the owner, the secretary of energy and environmental  
71 affairs may grant a waiver releasing the owner from the replacement land requirements, set forth  
72 in sub-sections (g) through (j) of Section 3, conditional upon (a) subsequent to disposition there  
73 being no change in use or physical change in the lands or easements disposed other than change

74 due to natural causes; (b) any proposed change in use being temporary and within no more than  
75 five years from the change in use the lands or easements reverting to the same state and use as  
76 existed immediately prior to the change in use; or (c) the lands or easements proposed for  
77 disposition or change in use being occupied by pre-existing buildings or sheds, which may  
78 include immediately adjacent land containing out-buildings, paved areas or landscaped areas  
79 appurtenant to, necessary for and used solely for said pre-existing buildings or sheds. If a waiver  
80 is granted such waiver shall be provided to the general court in lieu of the requirements set forth  
81 in sub-sections (g) through (j) of Section 3. Any act authorizing disposition or change in use  
82 subject to a waiver under condition (a) or (b) of this section shall require that, if at any time said  
83 condition on which the waiver is based ceases to be met, title, jurisdiction, control, and other  
84 rights and perquisites disposed shall revert to the owner or the change in use shall become  
85 invalid and cease to have statutory approval and that any deed, lease, or other instrument  
86 effecting the disposition or change in use shall so stipulate.

87 Section 5. The joint committee on bonding, capital expenditures and state assets and the  
88 joint committee on municipalities and regional government shall each file a report by August 30  
89 of the second year of each legislative session with the clerks of the senate and house of  
90 representatives detailing their activities on all bills referred to them that involve dispositions or  
91 changes in use of lands or easements taken or acquired for natural resources purposes under  
92 Article 97.

93 Section 6. The commonwealth or its agency, authority or instrumentality shall notify the  
94 public at least 30 days prior to filing a bill to dispose or change the use of any Article 97 lands or  
95 easements.

96           SECTION 2. Within 6 months after the effective date of this act, the secretary of energy  
97 and environmental affairs shall develop and publish for public review and comment guidelines  
98 for conducting an alternatives analysis and identifying replacement land and within 1 year after  
99 the effective date of this act shall publish the guidelines in final form.