

SENATE No. 396

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act protecting 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.

4 PUBLIC LANDS PRESERVATION ACT.

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

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

12 “Alternatives analysis”, a description of alternatives to a proposed disposition or change
13 in use of lands or easements protected under Article 97, including, but not limited to an analysis

14 of the most reasonable alternative (other than taking no action) that does not require a disposition
15 or change in use under Article 97; the description of an alternative shall include analysis of cost,
16 impact on current use and environmental impact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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