SENATE DOCKET, NO. 1201 FILED ON: 1/18/2013

SENATE . . . . . No. 682

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

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 voluntary withdrawal of land from registration.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia S. Creem	*First Middlesex and Norfolk*

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SENATE . . . . . No. 682

By Ms. Creem, a petition (accompanied by bill, Senate, No. 682) of Cynthia S. Creem for legislation relative to voluntary withdrawal of land from registration. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *2481* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to voluntary withdrawal of land from registration.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 183A of the General Laws is hereby amended by striking out section 16, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

Section 16. The owners of any land may submit that land under this chapter by the recording in the registry of deeds of a master deed or, if all of the land is registered under chapter 185 and the owners do not wish to withdraw the land from the operations of said chapter185, by filing the master deed under said chapter185. If the whole or a portion of the land desired to be submitted under this chapter is registered land under said chapter 185, such recording of a master deed shall be a sufficient ground for withdrawal of the registered land from said chapter 185.

SECTION 2. Chapter 185 of the General Laws is hereby amended by striking out section 52, as so appearing, and inserting in place thereof the following section:-

Section 52. The obtaining of a judgment of registration and the entry of a certificate of title shall be regarded as an agreement running with the land and binding upon the plaintiff and the plaintiff's successors in title that the land shall be and forever remain registered land and subject to this chapter, unless withdrawn under this section or under section 16 of chapter 183A and except as provided in section 26.

If all of a parcel of land, the title to which is registered under this chapter, is acquired by the commonwealth or any agency, department, board, commission or authority of the commonwealth or any political subdivision thereof or any authority of any such political subdivision, such acquisition shall be a sufficient ground for withdrawal of the registered land from this chapter. The land shall be withdrawn upon the filing of a complaint with the court by the public entity that has acquired the registered land and the approval of the complaint by the court.

All of the owners of the fee simple estate in all of a parcel of land, the title to which has been registered under this chapter, may voluntarily withdraw the registered land from this chapter by filing a notice of voluntary withdrawal, endorsed by a justice of the land court as provided in this section, in the registry district of the land court where the land lies. Such notice of voluntary withdrawal shall be noted on the memorandum of encumbrances for the certificate of title. Upon the filing of such notice, the land shall be withdrawn from this chapter and shall become unregistered land and the owners shall hold title to the land at the time of such filing free of all liens and encumbrances existing as of the time of filing of the notice, including adverse possession and prescriptive rights, as though a judgment of confirmation without registration effective as of the time of filing of the notice had been recorded under section 56A; provided, however, that the owner shall not hold title free of the encumbrances set forth or referred to in section 46 and those noted on the certificate of title or filed for registration before the filing of the notice of voluntary withdrawal.

As used in this section, “notice of voluntary withdrawal” shall mean an instrument in writing signed and acknowledged by all owners of the land to be voluntarily withdrawn and contains the following information: names and addresses of all owners; the certificate of title number with the registration book and page numbers; the description of the land in the form contained in the certificate of title; and the street address of such land, if any, and which bears the endorsement of a justice of the land court approving the voluntary withdrawal as provided in this section. Upon filing with the land court of a complaint to withdraw land, the plaintiff shall deposit with the recorder a sum sufficient to cover costs of the proceeding. The court shall then appoint 1 of the examiners of title, who shall make a report to the court as to the identity of the current record owners and of all mortgagees and lessees with interests of record in the land. Unless, after notice is given to the mortgagees and lessees of record, an outstanding objection has been filed by a mortgagee or lessees of record, a justice of the land court shall approve the application and shall endorse the plaintiff’s notice of voluntary withdrawal if: (i) the registered land constitutes less than all of the total area of a single parcel or of 2 or more contiguous parcels in common ownership; (ii) the registered land consists of less than 10 per cent of the portion of the land area to which an original certificate of title pertains and the rest of the land area to which that certificate pertains was conveyed under this chapter since the original registration; (iii) the owners of the registered land have submitted the land, or satisfy the court that they will submit the land, to chapter 183A or 183B or have created interests in the land to which said chapter

183B is applicable under section 3 of chapter 760 of the acts of 1987, or satisfy the court that they will create those interests; (iv) the owners of the registered land establish that the registered land is improved with an occupied building not used or occupied as or in connection with, and not designed or intended for use or occupancy as or in connection with, a 1 to 4 family residential dwelling; or (v) the court finds that the owners of the registered land have demonstrated other good cause for withdrawal under this section, including, but not limited to, economic hardship by reason of the land being registered which may include the burdens and expenses of further dividing the registered land into lots for separate conveyance. Notwithstanding any such outstanding objection, the application may be approved, unless the court determines there is good cause for the objection.

The justices of the land court shall establish rules and practices, including an appropriate filing fee for the application as are necessary to implement this section.

SECTION 3. Section 62 of chapter 185 of the General Laws is hereby amended in the second sentence by inserting, between the word "instrument" and the word "shall," a comma and the following words:- or by the presentation of a deed or other instrument executed on behalf of a corporation by a person or persons falsely purporting to be the president, vice president, treasurer, or assistant treasurer of such corporation,