

HOUSE No. 3651

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 1930) of the House Bill making appropriations for the fiscal year 2016 for the maintenance of the departments, boards commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 3401), reports, in part, recommending passage of the accompanying bill (House, No. 3651). July 7, 2015.

Brian S. Dempsey	Karen E. Spilka
Stephen Kulik	Sal N. DiDomenico
Todd M. Smola	Viriato Manuel deMacedo

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to the conveyance of easements in the town of Eastham.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize the conveyance of easements to the town of Eastham,, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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. (a) Notwithstanding sections 34 to 37 of chapter 7C of the General Laws,
2 the commissioner of capital asset management and maintenance, in consultation with the
3 commissioner of conservation and recreation, may grant 2 subsurface easements upon a certain
4 parcel of land currently under the care and control of the department of conservation and
5 recreation and held for conservation and recreation purposes to the town of Eastham to be used
6 for the installation, maintenance, repair and replacement of municipal water distribution systems
7 subject to the requirements of sections 2 to 5, inclusive, and to such additional terms and
8 conditions consistent with this act as the commissioner of capital asset management and
9 maintenance may prescribe in consultation with the commissioner of conservation and
10 recreation. The town’s easement rights, including rights for the installation, maintenance and
11 repair of infrastructure, shall not limit, restrict or close access to the Cape Cod rail trail for any
12 period of time, except as approved in writing by the department of conservation and recreation in

13 its sole discretion. The 2 easement areas collectively contain 20,950 square feet, more or less,
14 and are shown as “Inset Plan A” and “Inset Plan B” on a plan of land entitled “Contract 2 Water
15 Supply Wells, Control Building, & Piping, Eastham, Massachusetts”. The division shall prepare
16 a survey sufficient for recording at the Barnstable registry of deeds. Prior to finalizing the
17 transaction or making the conveyance authorized in this section, the division of capital asset
18 management and maintenance may make minor modifications to the area and plan in order to
19 carry out this act.

20 (b) An independent appraisal of the fair market value and value in use of the easements
21 described in section 1 shall be prepared in accordance with the usual and customary professional
22 appraisal practices by a qualified appraiser commissioned by the commissioner of capital asset
23 management and maintenance. Consideration for the grant of the above-described easements
24 shall be the full and fair market value or the value in proposed use, whichever is greater, as
25 determined by the commissioner of capital asset management and calculated with regard to its
26 full development potential as assembled with other lands owned or otherwise controlled by the
27 grantee. The commissioner of capital asset management and maintenance shall submit any
28 appraisals to the inspector general for review and comment. The inspector general shall review
29 and approve any such appraisals and the review shall include an examination of the methodology
30 utilized for the appraisals. The inspector general shall prepare a report of such review and file
31 the report with the commissioner of capital asset management and maintenance for submission
32 by the commissioner to the house and senate committees on ways and means and the joint
33 committee on state administration and regulatory oversight. The commissioner shall submit
34 copies of the appraisals and the inspector general’s review and approval and comments, if any, to
35 the house and senate committees on ways and means and the joint committee on state

36 administration and regulatory oversight at least 15 days prior to the execution of any documents
37 effecting the transfers described in this section.

38 (c) To ensure a no-net-loss of lands protected for natural resource purposes, the grantee
39 also shall compensate the commonwealth for the interest in land described in section 1 through
40 the transfer to the department of conservation and recreation of land, an interest of land or
41 funding for the acquisition of land or an interest therein equal to or greater than the resource
42 value of the land described in subsection (a) and the highest appraised value as determined under
43 subsection (b). The fair market value of any land or interest in land proposed to be conveyed by
44 the grantee to the department shall be included within the appraisal prepared pursuant to said
45 subsection (b). The land, interest in land or funding shall be acceptable to the department of
46 conservation and recreation and any land or interest in land, whether conveyed by the grantee or
47 acquired by the department, shall be permanently held and managed for conservation and
48 recreation purposes by the department. Should the appraised value of any land or interests in land
49 be determined to be greater than the appraised value of the interests in land described in
50 subsection (a), the commonwealth shall have no obligation to pay the difference to the grantee.
51 All payments paid to the commonwealth as a result of the conveyances or grants authorized by
52 this act shall be deposited in the Conservation Trust established in section 1 of chapter 132A of
53 the General Laws.

54 (d) The grantee shall assume all costs associated with engineering, surveys, appraisals,
55 deed preparation and other expenses deemed necessary by the commissioner of capital asset
56 management and maintenance to execute the conveyances authorized in this section.

57 (e) No instrument executed pursuant to this section shall be valid unless it provides that
58 the easements shall be used solely for the purposes described in subsection (c). The instrument
59 authorized in subsection (a) shall include a reversionary clause that stipulates the property shall
60 revert to the commonwealth and be assigned to the care, custody and control of the department
61 of conservation and recreation, upon such terms and conditions as the commissioner of capital
62 asset management and maintenance may determine, if the property ceases to be used for the
63 express purposes authorized in this section. If any interest reverts to the commonwealth, any
64 further disposition shall be subject to sections 34 to 37, inclusive, of chapter 7C of the General
65 Laws and the prior approval of the general court.

66 SECTION 2. The Nauset Regional School District may grant to the town of Eastham a
67 perpetual, assignable easement to run with the land over a certain parcel of land which is a
68 portion of the land owned by the district and acquired for school purposes, located at 100 Cable
69 road. The land is more particularly described in a deed recorded with the Barnstable county
70 registry of deeds in book 1393, page 881. The easement shall include the right in the town to
71 retain groundwater monitoring wells and drinking water supply wells on the parcel for all
72 purposes and uses incidental thereto along with any necessary appurtenances. The district may
73 grant to the town the rights of access, installation, operation, maintenance, repair, removal and
74 control of the easement and rights of entry upon and passage over the parcel from time to time
75 for all purposes stated in the grant of easement and the uses incidental thereto. The district may
76 grant to the town all reasonable rights of ingress and egress across adjoining lands owned by the
77 district as may be necessary for the exercise of the rights granted in this section. The town shall
78 indemnify and hold harmless the district from and against any loss, damage or liability arising
79 out of the town's exercise of the rights and easement and shall provide to the district, potable

80 water needs for 99 years at no additional cost. The easement shall be subject to the right
81 expressly reserved by the district to continue to use the parcel for all purposes not adverse to the
82 rights granted by this section.

83 The easement is shown on a plan of land entitled "Plan of Utility Easement at Nauset
84 Regional High School" prepared by: Coastal Engineering Company, dated October 28, 2011 to
85 be recorded in the Barnstable county registry of deeds.