HOUSE DOCKET, NO. 4323 FILED ON: 12/1/2015

HOUSE . . . . . No. 3894

The Commonwealth of Massachusetts

PRESENTED BY:

Paul Tucker and Joan B. Lovely

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 authorizing the city of Salem to establish the Salem Harbor Port Authority.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Paul Tucker	*7th Essex*
Joan B. Lovely	*Second Essex*

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By Representative Tucker of Salem and Senator Lovely, a joint petition (accompanied by bill, House, No. 3894) of Paul Tucker and Joan B. Lovely (with the approval of the mayor and city council) that the city of Salem be authorized to establish the Salem harbor port authority. Transportation. [Local Approval Received.]

The Commonwealth of Massachusetts

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

An Act authorizing the city of Salem to establish the Salem Harbor Port Authority.

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:

The City of Salem is hereby authorized to establish the Salem Harbor Port Authority, hereinafter referred to as the Authority, which shall consist of the mayor and the ward one city councilor, both ex officio, and three members to be appointed by the Mayor and confirmed by the City Council of Salem. Appointments to the authority shall include at least two Salem residents who have one of the following prerequisites, maintain a membership in the Salem Marine Society, hold an advanced degree in Marine Transportation or Marine Engineering, maintains a membership in a Marine Pilot Association, or equivalent experience and/or education demonstrating knowledge of port operation or marine transportation.

A majority of the members of the Authority shall constitute a quorum, and the affirmative vote of a majority of all the members of the Authority shall be necessary to adopt any motion, resolution or binding action.

SECTION 2:

a) The Mayor shall appoint the initial members of the Authority as follows: one member shall serve for a term of one year; one member for a term of two years; and one member for a term of three years. Thereafter and upon expiration of the term of each such member, the Mayor shall appoint members of the Authority to succeed such appointees whose terms expire and each member so appointed shall hold office for a term of three years. Each appointed member shall hold office until his or her successor is appointed and qualified. Any member of the Authority shall serve at the pleasure of the Mayor and shall be removed by the Mayor for misfeasance, malfeasance or neglect of duty. The powers of the Authority shall be vested in and exercised by these appointed members of the Authority to further the purposes of this Act in accordance with all applicable law and for the best interests of the people of the City of Salem, as shall be determined by the Authority. Each appointed member of the Authority before commencing service shall take an oath before the City Clerk to administer the duties of office faithfully and in conformance with applicable law.

b) Any vacancy for any reason other than ordinary and usual expiration of term shall be filled by special appointment of the Mayor as promptly as possible for the remainder of the unexpired term. No less than thirty (30) days prior to the first meeting of the Authority, the Mayor shall designate the chairperson whose designation will be maintained for one calendar

32 year from the first meeting. Thereafter and no less than thirty (30) days prior to the expiration of
33 said designation, a majority of the Authority members present at meeting of the Authority for
34 which a quorum is in attendance may designate the first and each subsequent vice-chairperson
35 from the membership. The Mayor shall continue to designate the chairperson. The members
36 shall also elect a Secretary, Clerk and Treasurer, who may or may not be voting members of the
37 Authority.

38 c) Appointed members of the Authority may not designate a representative to vote
39 on their behalf. Any appointed member who fails to attend three consecutive meeting of the
40 Authority or who fails to attend fifty percent of all officially scheduled meetings of the Authority
41 held during any calendar year may be deemed by the Mayor to have resigned from the Authority,
42 at the Mayor's discretion.

43 d) No member of the Authority shall be compensated for their membership, beyond
44 reimbursement for actual and reasonable expenses, if any, incurred in the performance of their
45 duties. Further, ex-officio members of the Authority may continue to receive any usual and
46 customary compensation arising from said official position.

47 e) The Authority, with approval of the Mayor, may appoint and may, subject to
48 contractual obligation, remove a paid executive director, who may or may not also serve the City
49 of Salem in an additional professional capacity for additional compensation. The Authority shall
50 establish said executive director's contractual obligations and powers, which shall include
51 adhering to the provisions of this Act. Subject to the supervision and control of the Authority,
52 said executive director shall be the chief operating officer of the authority. Said executive
53 director shall attend all public meetings of the Authority but shall have no vote thereon. Said

54 executive director shall have the authority to hire and terminate additional staff and consultants,
55 within a budget approved by the Authority. The duration of any executive director employment
56 contract shall not exceed three years but may be extended any number of times.

57

58 SECTION 3:

59 The Salem Harbor Port Authority shall have the duty, power and authority generally to
60 coordinate port development within Salem Harbor and related lands as said geographic area is
61 defined in Section 4 of this Act (the "Harbor Port Area") and shall cause to be made plans for the
62 development and operation of said Harbor Port Area with a focus on enhancing private and
63 public revenues and investments, pursuit of and readiness to obtain or receive private and public
64 funds for any and all port infrastructure improvements, including but not limited to dredging, to
65 increase the operational and economic capacity of said Harbor Port Area all for the benefit
66 primarily of the public interest of the City of Salem. The Authority shall be granted and may
67 delegate operational control of any and all land, piers, docks, and other structures and facilities
68 now owned or operated by the City or conveyed to the City, in whole or in part such as by deed,
69 easement, license or shared operational controls, in the Harbor Port Area. Notwithstanding the
70 foregoing, to the extent necessary to comply with applicable law or contract, such as but not
71 limited to any pending inter-governmental agreements or bonding obligations of the City of
72 Salem, existing management of land, piers, docks, and other structures described in Section 4
73 shall remain in effect until such time as any legal or contractual obligations for their management
74 expires or otherwise ceases to remain in effect. During any such period, to the maximum extent
75 legally feasible, operational control shall be delegated to the Authority.

76 Further, if the Authority shall deem necessary or appropriate, it shall coordinate the
77 planning and funding of capital projects and operational and fee agreements promoting the
78 efficient development and operation of the Harbor Port Area including, but not limited to:

79 1. Develop organizational and management structures that will best accomplish the
80 purposes of the Authority;

81 2. Employ assistants, agents, contractors, consultants and employees as may be
82 deemed necessary or desirable by the Authority to undertake its duties and responsibilities;

83 3. Receive and accept aid or contributions, from any source, of money, property,
84 labor or other things of value, to be held, used and applied to carry out the duties, powers and
85 authorities of this Act. Notwithstanding any special or general law to the contrary, the Authority
86 may receive donated money, property, labor or other things of value without competitive public
87 bid for such donation; and

88 4. Invest in, acquire, lease, purchase, own, manage, hold and dispose of real property
89 interests including but not limited to, interests in the land, piers, docks, and other structures in the
90 Harbor Port Area. Any such real property interests remain subject to all applicable state, local
91 and federal laws, except as specified herein. In no event shall property interests acquired or held
92 by the Authority be deemed subject to Article 97 of the Massachusetts Constitution, so long as
93 said real property interest is used by or on behalf of the Authority primarily for the purposes of
94 the Authority.

95 With the approval of the Mayor and City Council, to further the purposes of this Act, the
96 Authority may take by eminent domain any land or interest in land within the Harbor Port Area.
97 The price paid for any such land or interest in land shall not exceed fair market value as

98 reasonably determined by the Authority at the time of such taking. All proceedings in the taking
99 of land shall be under the advice of the City Solicitor of the City of Salem, and a record thereof
100 shall be kept by said Solicitor.

101 SECTION 4:

102 The Harbor Port Area shall include, but not be limited to the land and appurtenances at
103 10 Blaney Street, Salem, the buildings and improvements thereon and the Salem Ferry, Nathaniel
104 Bowditch.

105 SECTION 5:

106 The operations of the Authority shall be conducted in a manner to promote and encourage
107 the use of the Harbor to the fullest extent possible in an environmentally and economically
108 sustainable manner and pursuant to this Act, the Authority:

109 1. Shall procure insurance against any liability or loss in connection with its property
110 interests and other assets or obligations, in such amounts and from such insurers as it deems
111 necessary or appropriate and to procure insurance for employees and Authority members as it
112 deems necessary or appropriate; The Authority shall at all times maintain adequate and
113 reasonable insurance for its members and any agents hired by or acting on behalf of the
114 Authority, as well as adequate and reasonable property and liability insurance;

115 2. May borrow money or secure credit on a temporary, short-term, or interim or
116 long-term basis. Subject to its usual and applicable authority, the City of Salem may also borrow
117 and issue bonds or notes of the city for the purposes of the Authority in addition to the purposes
118 specified in MGL Chapter 44, Section 7;

119 3. May sue and be sued in its own name, and plead and be impleaded, but
120 notwithstanding any special or general law to the contrary, shall not be liable for punitive
121 damages; and

122 4. Make and enter into contracts and agreements necessary or incidental to the
123 performance of its duties and the execution of the powers granted by this Act, including, but not
124 limited to the granting of leasehold interests, concessions, access and development rights and
125 privileges, supplier, vendor, contractor and consultant contracts.

126 SECTION 6:

127 In the event there is an excess of Authority income received over current expenses and
128 liabilities, all such amounts shall be retained by the Authority for execution of the purposes
129 stated in this Act, including but not limited to maintaining reserves or enhancement of credit
130 worthiness, and shall not be diverted to other funds or purposes outside this Act. Excess of
131 income received over current expenses and liabilities shall be determined at least annually, with
132 a certified public audit at least every three years.

133 SECTION 7:

134 The Authority shall be a public instrumentality for purpose of this Act, shall have an
135 official seal and may alter the same at its pleasure.

136 SECTION 8:

137 The Authority may apply for, receive, accept and spend any federal or state agency grants
138 or loans for, or in aid of, its purposes, including but not limited to public works. The Authority
139 may receive and accept contributions from any source, of money, property, labor or any other

140 thing of value, to be held, used and applied only for the purposes of this Act, and may do all acts

141 and things necessary or convenient to carry out the powers granted or implied by this act.

142 SECTION 9:

143 This act shall take effect upon its enactment.