

**HOUSE . . . . . No. 2108****The Commonwealth of Massachusetts**

PRESENTED BY:

***Ruth B. Balser***

*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 protecting the natural resources of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>1/19/2017</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	
<i>Thomas P. Walsh</i>	<i>12th Essex</i>	
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	
<i>Chris Walsh</i>	<i>6th Middlesex</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	
<i>Kay Khan</i>	<i>11th Middlesex</i>	
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	
<i>Natalie Higgins</i>	<i>4th Worcester</i>	
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>	
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	

<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	
<i>John J. Mahoney</i>	<i>13th Worcester</i>	
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>	
<i>Carlos González</i>	<i>10th Hampden</i>	
<i>James J. O'Day</i>	<i>14th Worcester</i>	
<i>Mike Connolly</i>	<i>26th Middlesex</i>	
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	
<i>Linda Dean Campbell</i>	<i>15th Essex</i>	
<i>Stephen Kulik</i>	<i>1st Franklin</i>	
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>	
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	
<i>James M. Murphy</i>	<i>4th Norfolk</i>	
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	
<i>Kathleen O'Connor Ives</i>	<i>First Essex</i>	

# HOUSE . . . . . No. 2108

---

By Ms. Balser of Newton, a petition (accompanied by bill, House, No. 2108) of Ruth B. Balser and others relative to environmental land replacement. Environment, Natural Resources and Agriculture.

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninetieth General Court  
(2017-2018)  
\_\_\_\_\_

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 is hereby amended by inserting after chapter 132B, the  
2 following chapter:

3           CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT.

4           Section 1. Definitions. As used in this chapter, the following words, unless the context  
5 clearly requires otherwise, shall have the following meanings: -

6           "Article 97", Article 97 of the Articles of Amendments to the Constitution.

7           "Article 97 land", land or any interest in land, that is taken, acquired or otherwise  
8 dedicated for specific Article 97 natural resource purposes, or land which is serving an Article 97  
9 natural resource purpose and has not been reserved for some other use.

10

“Article 97 natural resource purposes”, the Article 97 purposes that are the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources.

"Change in use", a conversion of Article 97 land from a devoted or allowed use.

A valid reserved use, including, but not limited to, any building or structure, shall be an allowed use if (i) declared when Article 97 land is taken, acquired or otherwise dedicated or (ii) established by special act.

"Disposition", any transfer, conveyance or release of a real property interest by a public owner whether by deed, covenant, easement, lease, or other instrument or lawful means.

A transfer or release of the legal right of control or custody in land by a public owner shall be a disposition under this definition.

The termination of a lease for the use of land shall not be a disposition under this definition.

A revocable permit or license that authorizes another to use Article 97 land shall not be a disposition when (i) the use is consistent with devoted or allowed uses of the Article 97 land, to include, if a forest, harvesting conducted pursuant to an approved cutting plan; and (ii) the permit or license does not transfer or release a real property interest in the land.

“Executive office of environmental affairs”, the executive office of energy and environmental affairs established under section 1 of chapter 21A.

“Land”, land that is without or with water, including, but not limited to, estuaries, creeks, streams, rivers, ponds, lakes, marshes, floodplains, and wetlands; but, not including, (i) land lying seaward of the coastal mean high water mark, to include, tidelands, tide plains, and under coastal waters; (ii) land lying seaward from the highest spring water mark that are under coastal wetlands and saltmarshes; (iii) land under coastal estuaries, and coastal ocean outlets of rivers and streams; and (iv) land under a Designated Port Area specified by the office of coastal zone management.

"Public owner", the commonwealth, its agencies, executive offices, departments, boards, commissions, bureaus, divisions, authorities, and political subdivisions, including, but not limited to, municipalities, counties, districts, and other governmental bodies and instrumentalities of the commonwealth, that hold Article 97 land.

“Real property interest” or “interest in land ", any ownership, or other legal interest or right in land, including, but not limited to, fee simple interest, easement, partial interest, remainder, future interest, right of legal control, lease; and conservation restriction, agricultural preservation restriction, watershed preservation restriction and historical preservation restriction as defined under section 31 of chapter 184; and non-development covenant or other covenant that protects natural resources.

"Replacement land", land or an interest in land, required under this chapter to be provided by a public owner to replace the loss of Article 97 land as a result of a disposition or

change in use. Replacement land shall not include existing Article 97 land, unless taken, acquired or otherwise dedicated for the specific purpose to substitute other Article 97 land proposed for disposition or change in use.

"Secretary" or "secretary of environment affairs", the secretary of the executive office of energy and environmental affairs, or his authorized representative.

"State agency" a legal entity of state government established by the general court as an agency, board, bureau, department, office or division of the commonwealth with a specific mission, which may either report to cabinet-level units of government, known as executive offices or secretariats, or be independent divisions or departments; and excluding those counties as defined under section 1 of chapter 7C.

"Taken" or "acquired", Article 97 land obtained by a public owner whether by gift, purchase, devise, grant, exchange, lease, eminent domain or otherwise.

Section 2. (a) To protect the natural resources of the commonwealth and to prevent a net loss of Article 97 land, a public owner making a disposition or change in use of Article 97 land shall acquire or otherwise provide replacement land. Replacement land for a disposition or change in use of Article 97 land shall be: (i) equal or greater in area, (ii) comparable or better in natural resource value, (iii) located within the same municipal boundaries if feasible, or nearby, and (iv) not less than the equivalent kind of the real property interest being replaced.

(b) A public owner when acquiring or providing replacement land, shall execute a written declaratory instrument that such land or interest in land is subject to protection under Article 97,

and record the instrument in the registry of deeds for the county or district where the land is situated. The instrument when executed shall include the effective date of the Article 97 land protection; and a specific description of the Article 97 land and the restricted uses and allowed uses of the land. The failure of the public owner to execute or record a declaratory instrument shall not invalidate any existing Article 97 protection of such replacement land.

Section 3. (a) A public owner of Article 97 land shall notify the secretary when the public owner proposes making a disposition or change in use of the Article 97 land. Such notification shall be in writing and made in the manner, as the secretary by regulation shall prescribe, to include the information and documentation as required under subsection (c).

The secretary shall adopt regulations requiring notification by a public owner be made as early as practicable, and prior to the filing of a petition with the general court to authorize the proposed Article 97 land disposition or change in use, to allow the secretary adequate time to review the proposal. The review shall include any plan of the public owner to provide replacement land. Unless otherwise provided under this section, the notification to the secretary shall be required at least 20 days before the public owner makes a decision to adopt a proposal for a disposition or change in use of its Article 97 land.

For Article 97 land held by a municipality, such notification to the secretary shall be required not less than 30 days before a vote of town meeting or city council, whichever is the case, on the municipality's proposed disposition or change in use of the Article 97 land. If the Article 97 land is located outside the municipality's boundaries, then, in addition, the

municipality shall make like notification to the local conservation commission where the land is sited.

For Article 97 land held by a state agency, notification to the secretary shall be required, in the time and manner as provided under subsection (a) of section 8.

The secretary shall post notification information received on Article 97 land proposals and replacement plans, on the public website of the executive office of environmental affairs.

(b) In the event, Article 97 land is to be taken by eminent domain, the authorized board acting for the public owner or other entity shall, within 10 days after adopting a lawful order of intention to take the land, notify the secretary of the proposed taking. Such notification shall be in writing, and made in the manner with any necessary information relevant to the taking of the land, as the secretary by regulation shall prescribe.

(c) Regulations to be adopted by the secretary shall require that notification of a proposed disposition or change in use of Article 97 land provide sufficient information about the proposal, its advantages and disadvantages to the public and the environment, and any feasible and practicable alternative to the proposed disposition or change in use. The regulations shall require notification include, but not be limited to, the following current information regarding the Article 97 land proposed for disposition or change in use: (1) a description of the land including its location, natural resource uses and benefits, approximate size and boundaries, allowed uses, and buildings and structures thereon; (2) the property's fair market value based on its municipal assessment; (3) whether any part is designated an endangered species habitat, wetland, flood zone, public water supply protection or subject to the rivers protection act under chapter 258 of

the acts of 1996; (4) a general description of abutting parcels; (5) owners holding a real property interest and description of each such respective interest; (6) copies of any deeds, easements, covenants, restrictions, declarations and other instruments that show (i) an owner's real property interest, and (ii) the land is to be used for a specific natural resource purpose; (6) a description of the proposed disposition or change in use and the reasons for the proposal, including anticipated, changes to the land and grantees of any transferred real property interest; (7) whether the public owner's acquisition of such Article 97 land was obtained (i) with funds, grants or loans from any federal, state or local source, or (ii) from a donation or bequest, on condition the gift be used for natural resource purposes; (8) copies of any relevant government issued approvals, orders and permits; and (9) alternatives considered to the proposed disposition or change in use.

The regulations adopted by the secretary shall also require that such notification provide information about the plan to acquire or provide replacement land to include, but not be limited to, the following: (1) the information listed in clauses (1) through (4), inclusive, of the prior paragraph, provided the information shall be specific to the replacement land; (2) current condition and relevant prior uses of the land; (3) owners that will hold a real property interest in such land when acquired or provided, and a description of each respective interest; (4) the source of the replacement land to be acquired or provided, from any intended (i) purchase, (ii) taking by eminent domain, (iii) designation of a currently held real property interest, (iii) donation or bequest; or (iv) receipt of another real property interest or such consideration, in exchange for the disposition of the Article 97 land.

A public owner shall supplement the information about an Article 97 land proposal or plan to provide replacement land, as the secretary shall prescribe by regulation.

138

139           Section 4. (a) A public owner may request from the secretary a waiver to provide  
140 replacement land for a disposition or change in use of the public owner's Article 97 land,  
141 notwithstanding the requirements under subsection (a) of section 2. Upon the written request of  
142 the public owner, the secretary may grant a full or partial waiver releasing the public owner from  
143 any requirement to provide replacement land. In granting a waiver, the secretary may impose  
144 conditions, if necessary, to accomplish the intended purpose of the disposition or change in use  
145 of the Article 97 land. A decision by the secretary to grant or deny a waiver with any conditions  
146 shall be in writing and state the reasons for his decision. A waiver shall be limited to the  
147 following circumstances when the disposition or change in use of Article 97 land, will (1)  
148 transfer only legal or physical control in the land between state agencies to be held for Article 97  
149 natural resource purposes and if applicable, with the same reserved uses; (2) transfer only legal  
150 or physical control in the land between any department, division, board or agency of the same  
151 municipality to be held for Article 97 natural resource purposes and if applicable, with the same  
152 reserved uses; (3) transfer a lease for a natural resource purpose or use for a term not exceeding 5  
153 years; (4) serve to largely protect, preserve or promote the natural resource purposes and uses of  
154 the land; (5) establish an easement to grade and alter elevations on the land to prevent erosion or  
155 provide lateral support to adjacent land; (6) grant an easement allowing for temporary use of the  
156 land for another purpose for a period not exceeding 5 years, provided upon its expiration, the use  
157 of the land will revert to the same Article 97 natural resource purposes and reserved uses in  
158 existence immediately prior to granting the easement; (7) grant an easement or lease for  
159 subterranean use of the land that will not affect adversely the dedicated Article 97 natural  
160 resource purposes of the land; (8) affect a land area not exceeding 2,500 square that is

insignificant for Article 97 natural resource purposes, provided, if part of a larger parcel, no other disposition or change in use of that parcel has occurred within 5 years before making a waiver request to the secretary; or (9) transfer a real property interest of a public owner to another public owner that holds a real property interest in the same Article 97 land.

Notwithstanding any provision to the contrary, the secretary may grant a requested waiver for other circumstances authorized specifically under special law.

(b) The secretary when determining whether the square footage of required replacement land is sufficient, shall not include any aboveground area for an allowed use that is exclusively for other than natural resources purposes, located on the replacement land or subject Article 97 protected land.

(c) The secretary as a condition in granting to the public owner a full or part waiver to provide replacement land under paragraph (6) of subsection (a) for the temporary use of land, may require a performance bond of satisfactory amount for any uncompleted restoration of the land be provided under the terms as specified by the secretary.

Section 5. The secretary shall provide to public owners, information and education on the policies, requirements and best practices to protect Article 97 land. To assist public owners, the secretary shall offer advice, guidance and technical assistance with the development of preliminary plans for the disposition or change in use of Article 97 land and replacement land alternatives. Such assistance shall include an assessment of the anticipated effect of regional climate change in the development of a proposed plan and any alternative options. Upon request of a public owner, the secretary shall make an evaluation of whether the public owner's

183 preliminary plan or revision of the plan, complies with the Article 97 no net loss requirements  
184 under subsection (a) of section 2 and related regulations.

185           Section 6. (a) The secretary shall provide to the general court a written recommendation  
186 for the approval or disapproval of each legislative petition that proposes a disposition or change  
187 in use of Article 97 land. To the extent possible, the recommendation shall be made before the  
188 first scheduled public hearing of the petition by a joint legislative committee of the general court.  
189 The recommendation shall identify the petition and include, his opinion as to whether: (1) the  
190 disposition or change in use, including any required replacement land complies with the Article  
191 97 no net loss requirements under subsection (a) of section 2 and related regulations; (2) the  
192 disposition or change in use will benefit the public; (3) an alternative to the proposed disposition  
193 or change in use, is not practical or feasible based on the circumstances; and (4) the required  
194 replacement land will provide equal or greater public environmental benefits.

195           Additionally, the secretary shall include with his recommendation whether the legislation  
196 adequately identifies the subject Article 97 land, required replacement land, and, necessary dates,  
197 terms and conditions. In his statement of recommendation, the secretary shall detail his reasons  
198 for the approval or disapproval of the legislative petition. If insufficient information about a  
199 proposed disposition or change in use of Article 97 land or replacement land precludes the  
200 secretary from giving a full opinion, the secretary shall make known this circumstance and  
201 reason in his recommendation.

202           The secretary shall adopt regulations establishing standards for providing  
203 recommendations to the general court on Article 97 land legislation. The regulations shall allow  
204 a recommendation of approval of such legislation, if the secretary's opinion agrees with the

statements contained in clauses (1) through (4), inclusive of the first paragraph, and if not, he shall recommend the disapproval of the legislation. Notwithstanding any provision to the contrary, the secretary may recommend approval of the legislation, if he determines there are extraordinary circumstances for a proposed disposition or change in use of Article 97 land or plan for replacement land, provided (i) no practicable or feasible alternative exists for the proposed legislation, (ii) the proposed disposition or change in use of Article 97 land is for a necessary public purpose, (iii) the overall intent of the no net loss of Article 97 land will be attained upon completion of the proposed disposition or change of use the land or the plan to provide replacement land, and (iv) the secretary states the reasons for his determination in the recommendation.

(b) A legislative committee of the general court referred a petition related to Article 97 land, may solicit from the secretary his recommendation on the legislation. The secretary shall respond to the request expeditiously, and in the manner, and using the standards and criteria set forth in the prior subsection.

(c) The secretary shall supplement his recommendation when Article 97 legislation is pending, if he determines there is a subsequent change or event that materially affects his prior response.

(d) The secretary shall post his recommendations on legislation on the public website of the executive office of environmental affairs.

226           Section 7. (a) A municipality in making a determination for a disposition or change in use  
227 of Article 97 land, to include a detailed plan to provide any required replacement land, shall first  
228 obtain the approval of its conservation commission. Approval by the commission shall require a  
229 2/3rds vote in support of the proposed disposition or change in use, at an open public meeting of  
230 the commission. No vote shall be held, unless, the commission has conducted a public hearing on  
231 the proposed disposition or change in use. The commission shall give public notice of such  
232 hearing, not less than 30 days before the scheduled hearing date; and, in addition shall provide  
233 written notice to the local regional planning agency.

234  
235           Except, in the event the disposition or change in use of Article 97 land relates to,  
236 parkland under the legal control of its municipal park commission, or agricultural land under the  
237 legal control of its municipal agricultural commission, then approval shall be by vote of the  
238 respective commission under the same procedures and requirements in this subsection for  
239 conservation commissions.

240  
241           (b) A municipality in making a determination for a disposition or change in use of Article  
242 97 land and after any approval required in subsection (a) shall obtain the approval of the city  
243 council or town meeting. If replacement land is required, a detailed plan to provide such land or  
244 land interest, shall be included as part of the approval determination by the city council or town  
245 meeting. Such approval shall require a 2/3rds vote by the city council or a 2/3rds vote by an  
246 annual or special town meeting, whichever is the case, in support of the disposition or change in  
247 use, including any replacement land plan. Said vote shall be held at an open public meeting.

(c) When a municipality holds Article 97 land sited within the boundaries of another municipality, the conservation commission of the other municipality may make a recommendation to the secretary on any proposed disposition or change in use of the Article 97 land. Before making a recommendation, the commission shall hold a public hearing on the proposal in the municipality, and provide reasonable notice. A commission's recommendation to approve or disapprove the proposed disposition or change in use shall be in writing and include a statement on the proposal's local environment impacts with the reasons for its determination. Approval of a recommendation shall require a majority vote of the commissioners in support at an open meeting of the commission. Any such recommendation to the secretary shall be made no later than 45 days after receiving notification from the municipal owner of the Article 97 land.

Section 8. (a) When the public owner is state agency that holds Article 97 land, the executive head of such agency or the secretary of the executive office in which such agency is located, shall make the initial proposal for a disposition or change in use of such Article 97 land, including a plan to provide replacement land. Such proposal shall be made in writing to the commissioner of capital asset management and maintenance, and, if not making the proposal, the secretary of environmental affairs.

Notwithstanding any other law to the contrary, the commissioner within 60 days of receipt of the proposal, shall, conduct a public hearing with the secretary to consider the proposed Article 97 land disposition or change in use, and any required replacement land plan in accordance with this section. The public hearing shall be in the municipality where the Article 97 protected land is located. The commissioner with approval of the secretary of environmental affairs may waive the public hearing when the proposed disposition or change in use of the Article 97 land: (i) for land other than a public park, affects a land area not exceeding 11,000

square feet, (ii) affects a land area of a public park not exceeding 11,000 square feet, provided the area does not exceed 20 percent of the total square footage of the park parcel, (iii) transfers the land with any existing reserved uses to another state agency to be held for the same or similar Article 97 natural resource purposes, (iv) establishes a temporary easement related to construction or natural resource project, (v) establishes an easement to alter land grades affecting small portions of the parcel, or (vi) allows reserved uses pertaining to small buildings or structures with a combined total footprint not exceeding 2,500 square feet in area.

The commissioner shall provide notice of such hearing at least 30 days prior to any determination regarding the proposal, including whether the proposal has any current or foreseeable, direct public use or benefit. Such notice of the public hearing shall be posted in the central register and on the public website of the executive office environmental affairs. Notice of the public hearing shall also be placed at least once each week for 4 consecutive weeks prior to the hearing, in newspapers with sufficient circulation to inform the people in the locality where the land protected under Article 97 is situated.

In the event the hearing is waived or not required, the commissioner and secretary of environmental affairs shall accept written comments for a period of 21 days. Public notice of the comment period shall be posted in the central register and on the public website of the executive office of environmental affairs.

Within 30 days after any required hearing or comment period, the secretary shall make a determination whether the proposed disposition or change in use of Article 97 land and any replacement land plan, complies with the Article 97 no net loss requirements under subsection (a) of section 2. Such determination shall be in writing, and give the reasons for his decision

with any recommendations or comments about the proposal. The secretary shall provide a copy of the determination to the commissioner, secretary of administration and finance and state agencies affected by the proposal; and shall post the determination on the public website of the executive office of environmental affairs.

Section 9. (a) When the public owner is a regional conservation district that holds Article 97 land that it has proposed for disposition or change in use, the supervisors of the conservation district shall approve such disposition or change in use, and any plan to provide replacement land. Such approval shall require a 2/3rds vote by the supervisors in support of the disposition or change in use, and any replacement land plan, to be held at an open meeting. No vote shall be held, unless, the supervisors first conduct a public hearing on the proposed disposition or change in use and replacement land plan. Such public hearing shall, be conducted in the municipality where the land protected under Article 97 is located. The chairman of the district supervisors shall provide public notice of the hearing, not less than 30 days before the scheduled hearing date.

(b) When the public owner is a county government not abolished by chapter 34 or other law, which holds Article 97 land that it proposes for disposition or change in use, the county commissioners shall approve such disposition or change in use, and any plan to provide replacement land. Such approval shall require a 2/3rds vote by the commissioners in support of the disposition or change in use, and any replacement land plan, to be held at an open meeting. No vote shall be held, unless, the commissioners conduct a public hearing on the proposed

disposition or change in use and replacement land plan. The commissioners shall give public notice of such hearing, not less than 30 days before the scheduled hearing date.

(c) When a public owner, other than a municipality, state agency, conservation district, or unabolished county government, holds Article 97 land it proposes for disposition or change in use, the public owner shall conduct a public hearing not less than 30 days prior to its final determination on the proposal and any plan to provide replacement land. A final determination for the purposes of this subsection shall be a vote of an authorized board, commission or other body of the public owner or a decision by the public owner's executive officer, whichever is the case, to authorize the proposed disposition or change in use of Article 97. The hearing shall be conducted in the municipality where the protected Article 97 land is situated. The public owner shall give public notice of such hearing not less than 30 days before the scheduled hearing date.

Section 10. For any public notice required under sections 8 and 9, written notice shall also be provided to: for each city or town in which the land protected under Article 97 is located, the city manager in the case of a city under Plan E form of government, the mayor and city council in the case of all other cities, the chairman of the board of selectmen in the case of a town; and the regional planning agency; and the representative members of the general court.

Section 11. A public owner having made a disposition or change in use of Article 97 land shall notify the secretary, when related to such disposition or change: (i) an instrument is

recorded in the registry of deeds affirming the Article 97 protection of replacement land, (ii) a grant of a temporary easement in the Article 97 land terminates; or (iii) an event or act completes the Article 97 land disposition or change in use. Such notification shall be made provided in the manner, and include any relevant information, as the secretary shall prescribe.

Section 12. The secretary shall prepare a comprehensive report annually describing the work of the executive office of environmental affairs relative to the protection, and disposition and change in use of Article 97 land in the commonwealth for the preceding year. Said report shall include, but, not limited to, the (i) aggregate number of Article 97 land related notifications received, reviews conducted and opinions provided (ii) a general description of replacement land required to prevent a no-net loss of Article 97 land and, (iii) total acreage of Article 97 land that became protected or lost protection. The annual report shall be filed with the clerks of the house of representatives and senate and with the chairmen of the joint committee on environment, natural resources and agriculture and shall be posted on the public website of the executive office of environmental affairs on or before, the first Wednesday of May.

Section 13. (a) Whenever a public owner's Article 97 land is taken by eminent domain, replacement land required shall be limited by the total value of the award for damages sustained by the public owner resulting from the land taking. The value of land conveyed or transferred to the public owner to replace the loss of Article 97 land, and that may be, partially or entirely, in lieu of damages, shall be considered an award for damages for the purpose of this section.

(b) A public owner upon receiving the entire damage award for Article 97 land taken by eminent domain shall be responsible to provide or acquire suitable replacement land. Before

357 acquiring or proving any required replacement land, the public owner shall consult with the  
358 secretary to review the planned replacement land. The secretary in his review shall determine  
359 whether the land complies with the Article 97 land no net loss requirements under subsection (a)  
360 of section (2); and, after taking into consideration the limitations on the value of replacement  
361 land under the prior subsection. The secretary may grant a full or partial waiver to provide  
362 replacement land when the public owner's Article 97 land is taken under eminent domain for use  
363 by another public owner to be protected as Article 97 land. Notwithstanding, if the monetary  
364 portion of a damage award is not of sufficient amount to acquire or provide any required  
365 replacement land, upon the public owner's request, the secretary may approve using the monies  
366 for other public natural resource purposes.

367  
  
368 (c) A public owner shall provide to the secretary relevant information about planned  
369 replacement land, as the secretary shall prescribe by regulation.

370 (d) Notwithstanding any special or general law to the contrary, when land is to be  
371 conveyed or transferred to a public owner to replace land taken by eminent domain under section  
372 7M of chapter 81 or other general law, then the secretary, if the land taken had been subject to  
373 Article 97, shall first approve the land conveyance or transfer.

374 Section 13. The secretary shall establish a self-subscribing email notification delivery  
375 system for the executive office of environmental affairs to send informational emails to the  
376 public and government organizations about proposed dispositions of Article 97 land and  
377 recommendations of the secretary on related legislation.

378           Section 14. The provisions of this chapter shall not apply to a disposition or change in use  
379 of Article 97 land, ordered or enjoined by a court or justice of a court.

380           SECTION 2. Within 1 year after this act takes effect, the secretary shall adopt regulations  
381 for the administration and enforcement of this chapter.

382           SECTION 3. This act shall take effect on January 1, 2018.