

HOUSE No. 2108

The Commonwealth of Massachusetts

PRESENTED BY:

Ruth B. Balsler

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

<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>1/19/2017</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/19/2017</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>	<i>1/19/2017</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>	<i>1/19/2017</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>1/19/2017</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>1/19/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/19/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/19/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>1/19/2017</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>	<i>1/19/2017</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>	<i>1/19/2017</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>	<i>1/19/2017</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>1/19/2017</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>	<i>1/19/2017</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/19/2017</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>1/19/2017</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>1/19/2017</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/19/2017</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>	<i>1/19/2017</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/19/2017</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>1/19/2017</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>1/19/2017</i>
<i>Kathleen O'Connor Ives</i>	<i>First Essex</i>	<i>1/19/2017</i>

HOUSE No. 2108

By Ms. Balsler of Newton, a petition (accompanied by bill, House, No. 2108) of Ruth B. Balsler 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

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

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

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

18

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

21

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

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

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

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

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

39

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

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

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

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

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

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

62

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

65 Section 2. (a) To protect the natural resources of the commonwealth and to prevent a no
66 net loss of Article 97 land, a public owner making a disposition or change in use of Article 97
67 land shall acquire or otherwise provide replacement land. Replacement land for a disposition or
68 change in use of Article 97 land shall be: (i) equal or greater in area, (ii) comparable or better in
69 natural resource value, (iii) located within the same municipal boundaries if feasible, or nearby,
70 and (iv) not less than the equivalent kind of the real property interest being replaced.

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

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

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

82

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

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

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

96

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

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

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

106 (c) Regulations to be adopted by the secretary shall require that notification of a proposed
107 disposition or change in use of Article 97 land provide sufficient information about the proposal,
108 its advantages and disadvantages to the public and the environment, and any feasible and
109 practicable alternative to the proposed disposition or change in use. The regulations shall require
110 notification include, but not be limited to, the following current information regarding the Article
111 97 land proposed for disposition or change in use: (1) a description of the land including its
112 location, natural resource uses and benefits, approximate size and boundaries, allowed uses, and
113 buildings and structures thereon; (2) the property's fair market value based on its municipal
114 assessment; (3) whether any part is designated an endangered species habitat, wetland, flood
115 zone, public water supply protection or subject to the rivers protection act under chapter 258 of

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

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

136 A public owner shall supplement the information about an Article 97 land proposal or
137 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

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

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

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

171

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

176 Section 5. The secretary shall provide to public owners, information and education on the
177 policies, requirements and best practices to protect Article 97 land. To assist public owners, the
178 secretary shall offer advice, guidance and technical assistance with the development of
179 preliminary plans for the disposition or change in use of Article 97 land and replacement land
180 alternatives. Such assistance shall include an assessment of the anticipated effect of regional
181 climate change in the development of a proposed plan and any alternative options. Upon request
182 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

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

215

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

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

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

225

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.

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

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

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

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

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

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

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

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

297 Section 9. (a) When the public owner is a regional conservation district that holds Article
298 97 land that it has proposed for disposition or change in use, the supervisors of the conservation
299 district shall approve such disposition or change in use, and any plan to provide replacement
300 land. Such approval shall require a 2/3rds vote by the supervisors in support of the disposition or
301 change in use, and any replacement land plan, to be held at an open meeting. No vote shall be
302 held, unless, the supervisors first conduct a public hearing on the proposed disposition or change
303 in use and replacement land plan. Such public hearing shall, be conducted in the municipality
304 where the land protected under Article 97 is located. The chairman of the district supervisors
305 shall provide public notice of the hearing, not less than 30 days before the scheduled hearing
306 date.

307

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

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

316

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

326

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

332

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

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

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

349

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

355 (b) A public owner upon receiving the entire damage award for Article 97 land taken by
356 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.