

SENATE No. 2181

The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court
(2017-2018)
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SENATE, Thursday, October 19, 2017

The committee on Environmental, Natural Resources and Agriculture to whom was referred the petitions (accompanied by bill, Senate, No. 419) of James B. Eldridge, Ruth B. Balser, Marjorie C. Decker, Paul R. Heroux and other members of the General Court for legislation to protect the natural resources of the commonwealth; and (accompanied by bill, House, No. 2108) of Ruth B. Balser and others relative to environmental land replacement, reports the accompanying bill (Senate, No. 2181).

For the committee,
Anne M. Gobi

The Commonwealth of Massachusetts

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An Act protecting the natural resources of the commonwealth.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to preserve our public natural resources, 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. The General Laws is hereby amended by inserting after chapter 131A, the
2 following chapter:

3 CHAPTER 131B. 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 “Acquire or “acquired”, land or an interest in land, obtained by a public owner whether
7 by purchase, exchange, devise, grant, lease, eminent domain or otherwise.

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

9 "Article 97 land", land or any interest in land, that is subject to protection under Article
10 97.

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 dedicated use to a different
15 inconsistent use, excepting any allowed nonconforming reserved use of the Article 97 land.

16 A valid nonconforming reserved use, including, but not limited to any building or
17 structure, shall be an allowed use of Article 97 land if (i) declared in a written instrument when
18 land or an interest in land is taken by eminent domain, acquired or otherwise dedicated as Article
19 97 land, (ii) the use, when not declared by written instrument, is pre-existing and continuing
20 when the Article 97 land is dedicated, provided the use is legally permissible, or (iii) allowed by
21 a special law approved by a 2/3rds vote of both branches of the general court.

22 A conversion of Article 97 land caused by natural causes or occurrences shall not be
23 considered a change in use under this definition.

24 "Disposition", any transfer, conveyance or release of a public owner’s real property
25 interest whether by deed, covenant, or other instrument, or lawful means or process.

26 A transfer or release of the public owner’s right of legal control in land shall be a
27 disposition under this definition.

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

30 A revocable permit or license that authorizes another to use Article 97 land shall not be a
31 disposition when (i) the use is consistent with dedicated or allowed uses of the Article 97 land, to

32 include, if a forest, harvesting conducted pursuant to an approved cutting plan; and (ii) the permit
33 or license does not transfer or release a real property interest in the Article 97 land.

34 "Executive office of environmental affairs", the executive office of energy and
35 environmental affairs established under section 1 of chapter 21A.

36 "Land", land that is without or with water, including, without limitation, estuaries, creeks,
37 streams, rivers, ponds, lakes, marshes, floodplains, wetlands and coastal tidelands; but, excluding
38 ocean land lying seaward of the mean low water mark of coastal areas that are within the marine
39 boundaries of the commonwealth.

40 "Public owner", the commonwealth, its agencies, executive offices, departments, boards,
41 bureaus, divisions, authorities, and political subdivisions, including, without limitation,
42 municipalities, counties, districts, and other governmental bodies and instrumentalities of the
43 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, without limitation, 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 or
49 restriction that protects natural resources.

50 "Replacement land", land or an interest in land, (i) 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 and (ii) to be taken by eminent domain, acquired or otherwise dedicated, by the
53 public owner as Article 97 land. Replacement land shall not include existing Article 97 land,

54 unless when taken by eminent domain, acquired or otherwise dedicated by the public owner as
55 Article 97 land, it was to substitute for other Article 97 land proposed for disposition or change
56 in use.

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

59 "State agency", a legal entity of state government established by the general court as an
60 agency, board, bureau, commission, department, office or division of the commonwealth with a
61 specific mission, which may either report to cabinet-level units of government, known as
62 executive offices or secretariats, or be independent divisions or departments; provided a state
63 agency shall not include the counties listed under the definition of "Counties" under section 1 of
64 chapter 7C.

65 Section 2. (a) To protect the natural resources of the commonwealth and to prevent a net
66 loss of Article 97 land, a public owner making a disposition or change in use of Article 97 land
67 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, and (iv) not
70 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 to confirm that such land or interest in land is subject to protection under
73 Article 97, and record the instrument in the appropriate registry of deeds or land court
74 department of the trial court for the county or district where the land is situated. The instrument
75 when executed shall, include the dedication date of the Article 97 land and a specific description

76 of the Article 97 land with the restricted and allowed uses of the land. Such instrument shall not
77 preempt or limit a public owner's use of any other lawful method to dedicate Article 97 land.
78 The failure of the public owner to execute or record a declaratory instrument shall not invalidate
79 any existing Article 97 protection of the replacement land.

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

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

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

97 For Article 97 land held by a state agency, notification to the secretary shall be required
98 in the time and manner 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 adopted by the secretary under subsection (a), shall require that
107 notification of a proposed disposition or change in use of Article 97 land provide sufficient
108 information about the proposal, its advantages and disadvantages to the public and the
109 environment, and any feasible and practicable alternative to the proposed disposition or change
110 in use. Such regulations shall require current information about the Article 97 land proposed for
111 disposition or change in use, including, without limitation, the following: (1) a description of the
112 land including its location, natural resource uses and benefits, approximate size and boundaries,
113 devoted and allowed uses, and buildings and structures thereon; (2) the property's fair market
114 value based on the municipal assessment; (3) whether the land or any part, is designated as a
115 wetland, flood zone, public water supply, public water supply protection area, or priority habitat
116 for state-listed species that are endangered, threatened or of special concern; or subject to, the
117 rivers protection act under chapter 258 of the acts of 1996 or non-development covenant; (4) a
118 general description of abutting parcels; (5) owners that hold a real property interest and

119 description of each respective interest; (6) copies of any deeds, easements, covenants,
120 restrictions, declarations and other instruments that are public records and show (i) each owner's
121 real property interest, and (ii) the land's intended use for a specific natural resource purpose; (7)
122 a description of the proposed disposition or change in use and the reasons for the proposal,
123 including anticipated changes to the land, and the intended grantees of any proposed transfer of a
124 real property interest; (8) whether the public owner's acquisition of the land was obtained with
125 funds, grants or loans from any federal, state or local source, or from a donation or bequest
126 conditioned that the gift be used for natural resource purposes; and (9) alternatives considered to
127 the proposed disposition or change in use.

128 (d) The regulations adopted by the secretary under subsection (a), shall require current
129 information about any plan to acquire or provide replacement land, including, without limitation,
130 the following: (1) the same kind of information listed in clauses (1) through (4), inclusive, of said
131 subsection (c), however, specific to the replacement land; (2) the condition of the land, and the
132 relevant current and prior uses of the land; (3) owners that will hold a real property interest in the
133 replacement land, and a description of each respective interest; and (4) a description of the
134 intended source of the replacement land to be acquired or provided, and information about any
135 funds, grants, loans or other consideration to purchase or obtain such replacement land.

136 (e) A public owner shall supplement the information in subsections (c) and (d), about an
137 Article 97 land proposal and replacement land plan, as the secretary shall prescribe by regulation.

138 (f) The secretary after receipt of a public owner's notification that contains sufficient
139 information shall provide to the public owner a provisional or final opinion on whether the

140 proposed replacement land plan meets the no net loss requirements under subsection (a) of
141 section 2.

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

163 land; (8) affect a land area not exceeding 2,500 square feet that is insignificant for the dedicated
164 natural resource purposes of the Article 97 land, provided if part of a larger parcel, no other
165 disposition or change in use of that parcel has occurred within 5 years before making a waiver
166 request to the secretary; or (9) transfer a real property interest of a public owner to another public
167 owner, provided upon transfer such interest is protected under Article 97, and is used for the
168 same natural resource purposes and allowed uses.

169 If after a complete review of replacement land alternatives the secretary determines there
170 are extraordinary circumstances in providing suitable replacement land within particular
171 municipality boundaries or nearby, the secretary may issue a partial waiver to allow for modified
172 replacement land, provided however, the overall intent of no net loss of Article 97 land will be
173 attained to the maximum extent practicable, and the replacement land allowed is comparable or
174 better in natural resource value to the Article 97 land being replaced.

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

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

183 (d) The secretary when determining whether proposed replacement land is comparable or
184 better in natural resource value under clause (ii) of subsection (a) of section 2, shall in addition to

185 other factors, consider the land's location and condition, intended and allowed uses and overall
186 natural resource benefits.

187 Section 5. The secretary shall provide to public owners, information and education on the
188 policies, requirements and best practices to protect Article 97 land. To assist a public owner, the
189 secretary shall offer advice, guidance and technical assistance with the development of
190 preliminary and proposed plans for the disposition or change in use of Article 97 land and
191 replacement land alternatives. Such assistance shall include an assessment of the anticipated
192 effect of regional climate change in the development of a proposed plan and any alternative
193 options. Upon request of a public owner, the secretary shall review and make written evaluation
194 of whether the public owner's preliminary or proposed plan, or any revision of the plan,
195 complies with Article 97 no net loss requirements under subsection (a) of section 2, and related
196 regulations. A copy of the written evaluation shall be provided to the public owner.

197 Section 6. (a) The secretary shall provide to the general court a written recommendation
198 to approve or disapprove each legislative petition that proposes a disposition or change in use of
199 Article 97 land. If possible, the secretary shall make the recommendation before the first public
200 hearing of the petition by a joint legislative committee of the general court. The recommendation
201 shall identify the petition and include his opinion as to whether (1) the disposition or change in
202 use, including any required replacement land complies with the Article 97 no net loss
203 requirements under subsection (a) of section 2, and related regulations; (2) the disposition or
204 change in use will benefit the public; (3) an alternative to the proposed disposition or change in
205 use, is not practical or feasible based on the circumstances; and (4) the required replacement land
206 will provide equal or greater public environmental benefits.

207 Additionally, the secretary shall include with his recommendation whether the legislation
208 adequately identifies the subject Article 97 land and required replacement land and contains the
209 necessary terms and conditions. In his statement, the secretary shall detail the reasons for his
210 recommendation of the legislative petition. If insufficient information about a proposed
211 disposition or change in use of Article 97 land or replacement land precludes the secretary from
212 giving a full opinion, the secretary shall make known this circumstance and reason in his
213 recommendation.

214 The secretary shall adopt regulations establishing standards for providing
215 recommendations to the general court on Article 97 land legislation. The regulations shall allow
216 a recommendation of approval of such legislation, if the secretary's opinion agrees with the
217 statements contained in clauses (1) through (4), inclusive of the first paragraph, and if otherwise,
218 he shall recommend such legislation not be approved. Notwithstanding, the regulations shall
219 allow the secretary to recommend approval of the legislation, if he determines there are
220 extraordinary circumstances for a proposed disposition or change in use of Article 97 land or
221 plan for replacement land, provided (i) no practicable or feasible alternative exists for the
222 proposed legislation, (ii) the proposed disposition or change in use of Article 97 land is for a
223 necessary public purpose, (iii) the overall intent of no net loss of Article 97 land will be attained
224 to the maximum extent practicable, and (iv) the recommendation provides the reasons for the
225 secretary's determination.

226 In circumstances when Article 97 land is to be taken by eminent domain from a public
227 owner, and no replacement land has been proposed, the regulations shall allow the secretary to
228 make a qualified recommendation about the legislation. The secretary as part of the
229 recommendation shall provide information about the proposed legislation, its advantages and

230 disadvantages to the public and the environment, and whether there are any feasible alternatives
231 to the proposed disposition. In addition, the secretary shall provide an opinion whether the nature
232 of the disposition proposed by the legislation would qualify for a full or partial replacement land
233 waiver. The regulations shall require the secretary to detail his reasons for his qualified
234 recommendation.

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

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

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

244 Section 7. (a) A municipality in making a determination for a disposition or change in use
245 of Article 97 land, to include a detailed plan to provide any required replacement land, shall first
246 obtain the approval of its conservation commission. Approval by the commission shall require a
247 2/3rds vote in support of the proposed disposition or change in use, at an open public meeting of
248 the commission. No vote shall be held, unless, the commission has conducted a public hearing on
249 the proposed disposition or change in use. The commission shall give public notice of such
250 hearing, not less than 30 days before the scheduled hearing date; and, in addition shall provide
251 written notice to the local regional planning agency.

252 Except, in the event the disposition or change in use of Article 97 land relates to parkland
253 under the legal control of its municipal park commission, or agricultural land under the legal
254 control of its municipal agricultural commission, then approval shall be by vote of the respective
255 commission under the same procedures and requirements in this subsection for conservation
256 commissions.

257 (b) A municipality in making a determination for a disposition or change in use of Article
258 97 land and after any approval required in subsection (a), shall obtain the approval of the city
259 council or town meeting. If replacement land is required, a detailed plan to provide such land or
260 land interest, shall be included as part of the approval determination by the city council or town
261 meeting. Such approval shall require a 2/3rds vote by the city council or a 2/3rds vote by an
262 annual or special town meeting, whichever is the case, in support of the disposition or change in
263 use, including any replacement land plan. Said vote shall be held at an open public meeting.

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

274 Section 8. (a) When the public owner is a state agency that holds or controls Article 97
275 land, the executive head of such agency or the secretary of the executive office in which such
276 agency is located, shall make the initial proposal for a disposition or change in use of the Article
277 97 land, including a plan to provide required replacement land. Such proposal shall be made in
278 writing to the commissioner of capital asset management and maintenance, and, if not making
279 the proposal, to the secretary of environmental affairs.

280 The commissioner prior to making a determination on the proposal, shall within 60 days
281 of receipt of the proposal, conduct a public hearing with the secretary to consider the proposed
282 Article 97 land disposition or change in use, and any replacement land to be provided by the
283 commonwealth. The public hearing shall be in the municipality where the Article 97 protected
284 land is located. The commissioner with approval of the secretary of environmental affairs may
285 waive the public hearing when the proposed disposition or change in use of the Article 97 land:
286 (i) affects a land area not exceeding 11,000 square feet, provided the area is not located in a
287 public park, (ii) affects a land area of a public park not exceeding 11,000 square feet, provided
288 the area does not exceed 20 percent of the total square footage of the park parcel, (iii) transfers
289 the land with any existing reserved uses to another state agency to be held for the same or similar
290 Article 97 natural resource purposes, (iv) establishes a temporary easement related to
291 construction or natural resource project, (v) establishes an easement to alter land grades affecting
292 small portions of the parcel, or (vi) allows reserved uses pertaining to small buildings or
293 structures with a combined total area not exceeding 2,500 square feet.

294 The commissioner shall provide public notice of such hearing at least 30 days prior to
295 any determination regarding the proposal, including whether the proposal has any current or
296 foreseeable, direct public use or benefit. Such notice shall be posted in the central register and on

297 the public website of the executive office of environmental affairs, and additionally, shall be
298 placed at least once each week for 4 consecutive weeks prior to the hearing, in newspapers with
299 sufficient circulation to inform the people in the locality where the Article 97 land is situated.

300 In the event the hearing is waived or not required, the commissioner and secretary of
301 environmental affairs shall accept written comments for a period of 30 days. Public notice of the
302 comment period shall be posted in the central register and on the executive office of
303 environmental affairs' public website.

304 Within 30 days after any required hearing or comment period, the secretary shall make a
305 determination whether the proposed disposition or change in use of Article 97 land and any
306 replacement land plan, complies with the Article 97 no net loss requirements under subsection
307 (a) of section 2. Such determination shall be in writing and give the reasons for his decision with
308 any recommendations and comments about the proposal. The secretary shall provide a copy of
309 the determination to the commissioner, secretary of administration and finance and state agencies
310 affected by the proposal; and shall post the determination on the executive office of
311 environmental affairs' public website.

312 (b) The provisions of section 4 of chapter 7B and sections 33 and 34 of chapter 7C shall
313 not limit or modify the requirements under this chapter, applicable to the disposition or change in
314 use of Article 97 land, held or controlled by a state agency.

315 Section 9. (a) When the public owner is a regional conservation district that holds Article
316 97 land that it has proposed for disposition or change in use, the supervisors of the conservation
317 district shall approve such disposition or change in use, and any plan to provide replacement
318 land. Such approval shall require a 2/3rds vote by the supervisors in support of the disposition or

319 change in use, and any replacement land plan, held at an open meeting. No vote shall be held,
320 unless, the supervisors first conduct a public hearing on the proposed disposition or change in
321 use and replacement land plan. Such public hearing shall, be conducted in the municipality
322 where the land protected under Article 97 is located. The chairperson of the district supervisors
323 shall provide public notice of the hearing, not less than 30 days before the scheduled hearing
324 date.

325 (b) When the public owner is a county government not abolished by chapter 34 or other
326 law, which holds Article 97 land that it proposes for disposition or change in use, the county
327 commissioners shall approve such disposition or change in use, and any plan to provide
328 replacement land. Such approval shall require a 2/3rds vote by the commissioners in support of
329 the disposition or change in use, and any replacement land plan, held at an open meeting. No
330 vote shall be held, unless, the commissioners conduct a public hearing on the proposed
331 disposition or change in use and replacement land plan. The commissioners shall give public
332 notice of the hearing, not less than 30 days before the scheduled hearing date.

333 (c) When a public owner, other than a municipality, state agency, conservation district, or
334 unabolished county government, holds Article 97 land it proposes for disposition or change in
335 use, the public owner shall conduct a public hearing not less than 30 days prior to its final
336 determination on the proposal and any plan to provide replacement land. A final determination
337 to authorize the proposed disposition or change in use of Article 97 land shall be by a vote of an
338 authorized board, commission or other body of the public owner, and if no such board,
339 commission or body exists, then by a written decision of the public owner's executive officer.
340 The hearing shall be conducted in the municipality where the Article 97 land is situated. The

341 public owner shall give public notice of the hearing not less than 30 days before the scheduled
342 hearing date.

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

348 Section 11. Notwithstanding the provisions of subsection (a) of section 2 to the contrary,
349 when a special law allows a disposition or change in use of specific Article 97 land, which
350 requires or references any substitute land or interest in land, the public owner's obligation to
351 acquire or provide replacement land shall be governed exclusively by such special law.

352 Section 12. A public owner having made a disposition or change in use of Article 97 land
353 shall notify the secretary, when related to such disposition or change: (i) the public owner
354 acquires or provides any required replacement land, (ii) a temporary easement in the Article 97
355 land terminates, (iii) an event or act completes the Article 97 land disposition or change in use,
356 or (iv) upon any other event or act as the secretary shall establish by regulation Such notification
357 shall be made in the manner, and include any necessary information as the secretary shall
358 prescribe.

359 Section 13. The secretary shall prepare annually a comprehensive report describing the
360 work of the executive office of environmental affairs relative to the protection of Article 97 land
361 in the commonwealth for the preceding calendar year. The report shall provide information about
362 the disposition and change in use of Article 97 land and replacement land, including, without

363 limitation, the total number of notifications received, reviews conducted and opinions provided;
364 total acreage and description of replacement land required to prevent a no net loss of Article 97
365 land; and total acreage of Article 97 land that lost protection. The annual report shall be filed
366 with the clerks of the house of representatives and senate, and the chairs of the joint committee
367 on environment, natural resources and agriculture, and shall, be posted on the public website of
368 the executive office of environmental affairs, on or before the first Monday of April the
369 following year.

370 Section 14. (a) When a public owner's Article 97 land is taken by eminent domain, the
371 public owner upon receiving the entire damage award for such taking shall acquire or provide
372 suitable replacement land. The replacement land shall meet the no net loss criteria under clauses
373 (1) through (4), inclusive, of subsection (a) of section (2); except, the replacement land required
374 shall be limited by the total value of the award for damages sustained by the public owner
375 resulting from such land taking. The value of any land and additional funds conveyed or
376 transferred to the public owner to replace the loss of Article 97 land, and that may be, partially or
377 entirely, in lieu of damages, shall be considered an award for damages for the purpose of
378 determining the total value limitation under this subsection.

379 Before acquiring or providing any replacement land, the public owner shall consult with
380 the secretary to review the planned replacement land. The secretary in his review shall determine
381 whether the replacement land complies with said no net loss criteria; subject to, and, after taking
382 into consideration the total value limitations on replacement land. The secretary shall provide the
383 public owner with an opinion as to whether the planned replacement land is suitable.

384 The secretary may grant a full or partial waiver to a public owner to acquire or provide
385 replacement land under subsection (a) of section 4, when the public owner's Article 97 land is
386 taken by eminent domain from the public owner. Notwithstanding, if the monetary portion of a
387 damage award and any other compensation received by the public owner, are not sufficient to
388 acquire or provide suitable replacement land, upon the public owner's request, the secretary may
389 approve using the monies for other public natural resource purposes.

390 A public owner shall provide to the secretary relevant information about planned
391 replacement land under this section, as the secretary shall prescribe by regulation.

392 (b) Notwithstanding any other general law to the contrary, the secretary shall first
393 approve any interest in land conveyed or transferred to a public owner under section 7M of
394 chapter 81, if the conveyance or transfer is to replace Article 97 land taken by eminent domain
395 from such owner.

396 Section 15. (a) The secretary shall establish a self-subscribing email notification delivery
397 system to send informational emails to the public and government organizations about proposed
398 dispositions of Article 97 land and recommendations of the secretary on related legislation.

399 (b) Information required under this chapter to be posted on the executive office of
400 environmental affairs' public website, shall, in addition be posted in the environmental monitor.

401 (c) The secretary shall charge no fee for informational emails under subsection (a), or to
402 access information posted on the executive office of environmental affairs' public website as
403 required under this chapter.

404 SECTION 2. The secretary of the executive office of energy and environmental affairs
405 shall, not later than 1 year after this act takes effect, promulgate regulations for the requirements,
406 administration, and enforcement for the chapter established under section 1.

407 SECTION 3. Section 1 shall take effect 1 year after the effective date of this act.