

SENATE No. 2613

Senate, July 12, 2018 -- Text of amendment (36) (offered by Senator Eldridge) to the Ways and Means amendment (Senate, No. 2591) to the House Bill promoting climate change adaptation, environmental and natural resource protection, and investment in recreational assets and opportunity

The Commonwealth of Massachusetts

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

1 by inserting after section 66 the following section:-

2 “SECTION 66A. The General Laws are hereby amended by inserting after chapter 131A
3 the following chapter:-

4 CHAPTER 131B

5 PUBLIC LANDS PRESERVATION ACT

6 Section 1. As used in this chapter, the following words shall have the following meanings
7 unless the context clearly requires otherwise:

8 “Acquired”, land or an interest in land obtained by a public owner whether by purchase,
9 exchange, devise, grant, lease, eminent domain or otherwise.

10 “Article XCVII”, Article XCVII of the amendments to the constitution of the
11 commonwealth.

12 “Article XCVII land”, land or an interest in land that is subject to protection under Article
13 XCVII.

14 “Article XCVII natural resource purposes”, the conservation, development and utilization
15 of the agricultural, mineral, forest, water, air and other natural resources.

16 “Change in use”, a conversion of Article XCVII land of a public owner from a dedicated
17 use to a different inconsistent use, excepting any allowed nonconforming reserved use of the
18 Article XCVII land; provided, however, that a valid nonconforming reserved use shall include,
19 but not be limited to, a building or structure and shall be an allowed use of Article XCVII land if:
20 (i) such use has been declared in a written instrument when land or an interest in land is taken by
21 eminent domain, acquired or otherwise dedicated as Article XCVII land; (ii) the use, when not
22 declared by written instrument, is preexisting and continuing when the Article XCVII land is
23 dedicated if the use is legally permissible; or (iii) allowed by a special law approved by a 2/3
24 vote of both branches of the general court; and provided further, that a conversion of Article
25 XCVII land caused by natural causes or occurrences shall not be considered a change in use.

26 “Disposition”, a transfer, conveyance or release of a public owner’s real property interest
27 whether by deed, covenant or other instrument or by lawful means or process; provided,
28 however, that a “disposition” shall also include a transfer or release of the public owner’s right of
29 legal control in land; provided further, that “disposition” shall not include the termination of a
30 lease for the use of land; and provided further, that “disposition” shall not include a revocable
31 permit or license that authorizes another to use Article XCVII land of a public owner if: (i) the
32 use is consistent with dedicated or allowed uses of the Article XCVII land including, but not
33 limited to a forest or harvesting conducted pursuant to an approved cutting plan; and (ii) the
34 permit or license does not transfer or release a real property interest in the Article XCVII land.

35 “Executive office”, the executive office of energy and environmental affairs.

36 “Land”, land that is without or with water including, but not limited to, estuaries, creeks,
37 streams, rivers, ponds, lakes, marshes, floodplains, wetlands and coastal tidelands; provided,
38 however, that “land” shall not include ocean land lying seaward of the mean low water mark of
39 coastal areas that are within the marine boundaries of the commonwealth.

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

44 “Real property interest” or “interest in land”, an ownership or other legal interest or right
45 in land including, but not limited to, fee simple interest, easement, partial interest, remainder,
46 future interest, right of legal control, lease, conservation restriction, agricultural preservation
47 restriction, watershed preservation restriction and historical preservation restriction as defined in
48 section 31 of chapter 184 and a development covenant or other covenant or restriction that
49 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 XCVII land as a result of a disposition
52 or change in use; and (ii) to be taken by eminent domain, acquired or otherwise dedicated by the
53 public owner as Article XCVII land; provided, however, that “replacement land” shall not
54 include existing Article XCVII land unless, when taken by eminent domain, acquired or
55 otherwise dedicated by the public owner as Article XCVII land, it was to substitute for other
56 Article XCVII land proposed for disposition or change in use.

57 “Secretary”, the secretary of energy and environmental affairs or an authorized
58 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 executive offices or secretariats or be independent
62 divisions or departments; provided, however, that “state agency” shall not include counties as
63 defined in section 1 of chapter 7C.

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

71 (b) A public owner, when acquiring or providing replacement land, shall execute a
72 written declaratory instrument to confirm that such land or interest in land is subject to protection
73 under Article XCVII and shall record the instrument in the appropriate registry of deeds or land
74 court department of the trial court for the county or district wherein the land is situated. When
75 executed, the instrument shall include the dedication date of the Article XCVII land and a
76 specific description of the Article XCVII land with the restricted and allowed uses of the land.
77 Such instrument shall not preempt or limit a public owner’s use of any other lawful method to

78 dedicate Article XCVII land. The failure of the public owner to execute or record a declaratory
79 instrument shall not invalidate any existing Article XCVII protection of the replacement land.

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

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

92 For Article XCVII land held by a municipality, notification to the secretary shall be
93 required at least 30 days before a vote of town meeting or city council, as appropriate, on the
94 municipality's proposed disposition or change in use of the Article XCVII land. If the Article
95 XCVII land is located outside the municipality's boundaries, then the municipality shall make
96 like notification to the local conservation commission in the municipality wherein the land is
97 situated.

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

100 The secretary shall post notification information received on Article XCVII land
101 proposals and replacement plans on the public website of the executive office.

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

107 (c) Regulations adopted by the secretary under subsection (a) shall require that
108 notification by a public owner of a proposed disposition or change in use of Article XCVII land
109 shall provide sufficient information about the proposal and its advantages and disadvantages to
110 the public and the environment. Such regulations shall require current information about the
111 Article XCVII land proposed for disposition or change in use including, but not limited to: (i) a
112 description of the land including its location, natural resource uses and benefits, approximate size
113 and boundaries, devoted and allowed uses and buildings and structures thereon; (ii) the
114 property's fair market value based on the municipal assessment; (iii) whether the land or any part
115 thereof is designated as a wetland, flood zone, public water supply, public water supply
116 protection area or priority habitat for state-listed species that are endangered, threatened or of
117 special concern or subject to chapter 258 of the acts of 1996 or a nondevelopment covenant; (iv)
118 a general description of abutting parcels; (v) any owners that hold a real property interest and a
119 description of each respective interest; (vi) copies of any deeds, easements, covenants,
120 restrictions, declarations and other instruments that are public records and show: (1) each
121 owner's real property interest; and (2) the land's intended use for a specific natural resource
122 purpose; (vii) a description of the proposed disposition or change in use and the reasons for the

123 proposal, including anticipated changes to the land, and the intended grantees of any proposed
124 transfer of a real property interest; and (viii) whether the public owner's acquisition of the land
125 was obtained with funds, grants or loans from any federal, state or local source or from a
126 donation or bequest with a condition that the gift be used for natural resource purposes.

127 The regulations shall require that as part of the notification process that the public owner
128 certify in writing to the secretary that the public owner has considered alternatives to the
129 proposed disposition or change in use of the Article XCVII land and has determined no other
130 feasible or practicable alternative exists. The public owner shall provide information about any
131 alternative considered and the reason such alternative was not selected.

132 (d) The regulations adopted by the secretary under subsection (a), shall require current
133 information about any plan of the public owner to acquire or provide replacement land including,
134 without limitation: (i) the same kind of information listed in clauses (i) to (iv), inclusive, of
135 subsection (c) specific to the replacement land; (ii) the condition of the land and the relevant
136 current and prior uses of the land; (iii) owners that will hold a real property interest in the
137 replacement land and a description of each respective interest; and (iv) a description of the
138 intended source of the replacement land to be acquired or provided and information about any
139 funds, grants, loans or other consideration to purchase or obtain such replacement land.

140 (e) A public owner shall supplement the information in subsections (c) and (d) relative to
141 an Article XCVII land proposal and replacement land plan as the secretary shall prescribe by
142 regulation.

143 (f) After receipt of a public owner's notification that contains sufficient information, the
144 secretary shall, if requested by the public owner, provide to the public owner a provisional or

145 final opinion on whether the proposed replacement land plan meets the no-net-loss requirements
146 of subsection (a) of section 2.

147 Section 4. (a) Notwithstanding the requirements of subsection (a) of section 2, a public
148 owner may request from the secretary a waiver to provide replacement land for a disposition or
149 change in use of the public owner's Article XCVII land. Upon a public owner's written request,
150 the secretary may grant a full or partial waiver releasing the public owner from any requirement
151 to provide replacement land, subject to this subsection. Waiver requests shall be made in the
152 manner and shall include any related information as the secretary shall prescribe. In granting a
153 waiver, the secretary may impose conditions, if necessary, to accomplish the intended purpose of
154 the disposition or change in use of the Article XCVII land. A decision by the secretary to deny a
155 waiver or to grant waiver with conditions shall be in writing and shall state the reasons for
156 that decision. Waivers shall be limited to those circumstances as described below.

157 A full or partial waiver may be granted when the disposition or change in use of Article
158 XCVII land will: (i) transfer only a right of legal control of the land between state agencies to be
159 held for the same Article XCVII natural resource purposes and, if applicable, with the same
160 reserved uses; (ii) transfer only a right of legal control in the land between any department,
161 division, board or agency of the same municipality to be held for Article XCVII natural resource
162 purposes and, if applicable, with the same reserved uses; (iii) transfer a lease interest for a natural
163 resource purpose or use for a term not exceeding 5 years; (iv) serve to largely protect, preserve or
164 promote the existing natural resource purposes and uses of the Article XCVII land; (v) grant an
165 easement to grade and alter land elevations to prevent erosion or provide lateral support to
166 adjacent land; (vi) grant an easement to allow for the temporary use of the Article XCVII land
167 for a different purpose for a period not exceeding 5 years with the condition that the land be

168 reasonably restored before the easement period ends; (vii) grant an easement or lease for
169 subterranean use of the land for green energy projects that will not affect adversely the dedicated
170 natural resource purposes of the Article XCVII land; (viii) affect a land area not exceeding 2,500
171 square feet that is insignificant for the dedicated natural resource purposes of the Article XCVII
172 land; provided, however, that if the land is part of a larger parcel, no other disposition or change
173 in use of that parcel has occurred within 5 years before making a waiver request to the secretary;
174 or (ix) transfer a real property interest of a public owner to another public owner; provided,
175 however, that upon transfer, such interest shall be protected under Article XCVII and shall be
176 used for the same natural resource purposes and allowed uses.

177 If after a complete review of a public owner’s waiver request and replacement land
178 information the secretary determines that there are other extraordinary circumstances in
179 providing suitable replacement land within a particular municipality’s boundaries or nearby, the
180 secretary may issue a partial waiver to allow for modified replacement land; provided, however,
181 the overall intent of no net loss of Article XCVII land shall be attained to the maximum extent
182 practicable and the replacement land allowed shall be comparable or better in natural resource
183 value to the Article XCVII land being replaced.

184 (b) As a condition for granting to the public owner a full or partial waiver to provide
185 replacement land under clause (vi) of subsection (a) for the temporary use of land, the secretary
186 may require that a performance bond of satisfactory amount for any uncompleted restoration of
187 the land shall be provided.

188 (c) When determining whether the square footage of required replacement land is
189 sufficient, the secretary shall not include any aboveground area for an allowed use that is

190 exclusively for other than natural resources purposes related to the replacement land or to the
191 Article XCVII protected land.

192 (d) When determining whether the proposed replacement land is comparable or better in
193 natural resources value under clause (ii) of subsection (a) of section 2, the secretary shall, in
194 addition to other factors, consider the land's location and condition, intended and allowed uses
195 and overall natural resource benefits.

196 (e) This chapter and regulations adopted pursuant to this chapter shall not be subject to
197 section 27C of chapter 29.

198 Section 5. The secretary shall provide to public owners information and education on the
199 policies, requirements and best practices to protect Article XCVII land. To assist a public owner,
200 the secretary as the secretary determines, shall offer advice, guidance and technical assistance
201 with the development of preliminary and proposed plans for the disposition or change in use of
202 Article XCVII land and replacement land alternatives. Such assistance shall include an
203 assessment of the anticipated effect of regional climate change in the development of a proposed
204 plan and any alternative options. Upon request of a public owner, the secretary shall review and
205 make written a evaluation of whether the public owner's preliminary or proposed plan, or any
206 revision of the plan, complies with the Article XCVII no-net-loss requirements under subsection
207 (a) of section 2. A copy of the written evaluation shall be provided to the public owner.

208 Section 6. (a) The secretary shall provide to the general court a written recommendation
209 to approve or disapprove each legislative petition that proposes a disposition or change in use of
210 Article XCVII land. If possible, the secretary shall make the recommendation before the first
211 public hearing on the petition by a joint legislative committee. The recommendation shall

212 identify the petition and include the secretary's opinion as to whether: (i) the disposition or
213 change in use, including any required replacement land, complies with the Article XCVII no-net-
214 loss requirements under subsection (a) of section 2; (ii) the disposition or change in use will
215 benefit the public; and (iii) the required replacement land will provide equal or greater public
216 environmental benefits.

217 The secretary shall also include with such recommendation whether the legislation
218 adequately identifies the Article XCVII land and required replacement land and contains the
219 necessary terms and conditions. In the secretary's statement, the secretary shall detail the reasons
220 for the recommendation on the legislative petition and shall identify all alternatives to the
221 proposed disposition or change in use of the Article XCVII land that were considered and
222 reported by the public owner, including information reported about any alternative that the public
223 owner did not select. If insufficient information about a proposed disposition or change in use of
224 Article XCVII land or replacement land precludes the secretary from giving a full opinion, the
225 secretary shall make known this circumstance and reason in the recommendation.

226 The secretary shall adopt regulations establishing standards for providing
227 recommendations to the general court on Article XCVII land legislation. The regulations shall
228 allow a recommendation of approval of such legislation if the secretary's opinion agrees with the
229 statements contained in clauses (i) to (iii), inclusive of the first paragraph and, if otherwise, the
230 secretary shall recommend such legislation not be approved. Notwithstanding the foregoing, the
231 regulations shall allow the secretary to recommend approval of the legislation if the secretary
232 determines there are extraordinary circumstances for a proposed disposition or change in use of
233 Article XCVII land or plan for replacement land if: (i) no practicable or feasible alternative
234 exists for the proposed legislation; (ii) the proposed disposition or change in use of Article

235 XCVII land is for a necessary public purpose; (iii) the overall intent of no net loss of Article
236 XCVII land will be attained to the maximum extent practicable; and (iv) the recommendation
237 provides the reasons for the secretary's determination.

238 When Article XCVII land is to be taken by eminent domain from a public owner and no
239 replacement land has been proposed, the regulations shall allow the secretary to make a qualified
240 recommendation about the proposed legislation. As part of the recommendation, the secretary
241 shall provide information about the proposed legislation, its advantages and disadvantages to the
242 public and the environment and whether there are any known feasible alternatives to the
243 proposed disposition. The secretary shall also provide an opinion as to whether the nature of the
244 disposition proposed by the proposed legislation would qualify for a full or partial replacement
245 land waiver. The regulations shall require the secretary to detail his reasons for his qualified
246 recommendation.

247 (b) If a petition related to Article XCVII land is referred to a legislative committee, the
248 legislative committee may solicit the written recommendation of the secretary on the legislation.
249 The secretary shall respond to the request expeditiously in the manner and using the standards
250 and criteria set forth in subsection (a).

251 (c) The secretary shall supplement the secretary's recommendation when Article XCVII
252 legislation is pending, if the secretary determines that there is a subsequent change or event that
253 materially affects a prior response.

254 (d) The secretary shall post its recommendations on proposed legislation on the public
255 website of the executive office.

256 Section 7. (a) In making a determination for a disposition or change in use of Article
257 XCVII land that includes a detailed plan to provide any required replacement land, a
258 municipality shall first obtain the approval of its conservation commission. Approval by a
259 conservation commission shall require a 2/3 vote at an open public meeting of the commission.
260 No vote shall be held unless the conservation commission has conducted a public hearing on the
261 proposed disposition or change in use. The conservation commission shall give notice of such
262 hearing not less than 30 days before the scheduled hearing date and shall provide written notice
263 to the local regional planning agency.

264 Notwithstanding the first paragraph, if a disposition or change in use of Article XCVII
265 land relates to parkland under the legal control of a municipal park commission or agricultural
266 land under the legal control of a municipal agricultural commission, approval shall be by vote of
267 the respective commission under the same procedures and requirements in the first paragraph for
268 conservation commissions.

269 (b) In making a determination for a disposition or change in use of Article XCVII land
270 and after any approval required in subsection (a), a municipality shall obtain the approval of the
271 city council or town meeting. If replacement land is required, a detailed plan to provide such land
272 or land interest shall be included as part of the approval determination by the city council or
273 town meeting. Such approval shall require a 2/3 vote of the city council or a 2/3 vote at an annual
274 or special town meeting in support of the disposition or change in use and any replacement land
275 plan. The vote shall be held at an open public meeting.

276 (c) When a municipality holds Article XCVII land sited within the boundaries of another
277 municipality, the conservation commission of the other municipality may make a

278 recommendation to the secretary on any proposed disposition or change in use of the Article
279 XCVII land. Before making a recommendation, the commission shall, upon reasonable notice,
280 hold a public hearing on the proposal in the municipality. A commission's recommendation to
281 approve or disapprove the proposed disposition or change in use shall be in writing and shall
282 include a statement on the proposal's local environmental impacts with the reasons for its
283 determination. Approval of a recommendation shall require a majority vote of the commissioners
284 at an open meeting of the commission. Any such recommendation to the secretary shall be made
285 not later than 45 days after receiving notification from the municipal owner of the Article XCVII
286 land.

287 Section 8. (a) When the public owner is a state agency that holds or controls Article
288 XCVII land, the executive head of such agency or the secretary of the executive office in which
289 such agency is located, shall make the initial proposal for any disposition or change in use of the
290 agency's Article XCVII land. The proposal shall include a plan for replacement land or
291 information that the proposed disposition or change in use is eligible for a replacement land
292 waiver under subsection (a) of section 4. Such proposal shall be made in writing to the
293 commissioner of capital asset management and maintenance and, if not making the proposal, to
294 the secretary of energy and environmental affairs.

295 Prior to making a determination on the proposal and not less than 60 days after receipt of
296 the proposal, the commissioner and the secretary shall conduct a public hearing to consider the
297 proposed Article XCVII land disposition or change in use and any replacement land to be
298 provided by the commonwealth. The public hearing shall be in the municipality wherein the
299 Article XCVII land is located. The commissioner, with approval of the secretary, may waive the
300 public hearing when the proposed disposition or change in use of the Article XCVII land: (i)

301 affects a land area not exceeding 11,000 square feet and the area is not located in a public park;
302 (ii) affects a land area of a public park not exceeding 11,000 square feet and the area does not
303 exceed 20 per cent of the total square footage of the park parcel; (iii) transfers the land with any
304 existing reserved uses to another state agency to be held for the same or similar Article XCVII
305 natural resource purposes; (iv) establishes a temporary easement related to construction or
306 natural resource project; (v) establishes an easement to alter land grades affecting small portions
307 of the parcel; or (vi) allows reserved uses pertaining to small buildings or structures with a
308 combined total area not exceeding 2,500 square feet.

309 The commissioner shall provide public notice of such hearing at least 30 days prior to the
310 scheduled hearing date. Such notice shall be posted in the central register and on the public
311 website of the executive office and shall be placed at least once each week for 4 consecutive
312 weeks prior to the hearing in newspapers of general circulation in the locality wherein the Article
313 XCVII land is situated.

314 In the event the hearing is waived or not required, the commissioner and secretary shall
315 accept written comments for 30 days. Public notice of the comment period shall be posted in the
316 central register and on the executive office's public website.

317 Within 30 days after any required hearing or comment period, the secretary shall make a
318 determination whether the proposed disposition or change in use of the Article XCVII land and
319 any replacement land plan complies with the Article XCVII no-net-loss requirements under
320 subsection (a) of section 2 or a substitute method under subsection (e) of section 4. Alternatively,
321 the secretary shall determine whether such proposed disposition or change in use qualifies for a
322 replacement land waiver. Such determination shall be in writing and shall provide the reasons for

323 that decision and any recommendations and comments about the proposal. The secretary shall
324 provide a copy of the determination to the commissioner, the secretary of administration and
325 finance and the state agencies affected by the proposal and shall post the determination on the
326 executive office's public website. The secretary's determination shall be submitted with any
327 request of the commissioner to the general court to authorize the disposition or change in use of
328 such proposed Article XCVII land.

329 (b) Section 4 of chapter 7B and sections 33 and 34 of chapter 7C shall not limit or modify
330 the requirements under this chapter applicable to the disposition or change in use of Article
331 XCVII land held or controlled by a state agency.

332 (c) In the event of an emergency affecting public health and safety that necessitates a
333 temporary and significant change in use of Article XCVII land of the commonwealth, the
334 commissioner of capital asset management and maintenance upon written certification of such
335 emergency and with the approval of the secretary may waive or reduce the time period for any
336 public notice, hearing or comment period required under subsection (a) regarding such land use.
337 The certification shall identify the current and proposed change in use of the land and the
338 commissioner's reasons for the proposed action.

339 Section 9. (a) When the public owner is a regional conservation district that holds Article
340 XCVII land that it has proposed for disposition or change in use, the supervisors of the
341 conservation district shall approve such disposition or change in use and any plan to provide
342 replacement land. Such approval shall require a 2/3 vote of the supervisors at an open meeting.
343 No vote shall be held unless the supervisors first conduct a public hearing on the proposed
344 disposition or change in use and replacement land plan. Such public hearing shall be conducted

345 in the municipality where the land protected under Article XCVII is located. The chairperson of
346 the district supervisors shall provide public notice of the hearing not less than 30 days before the
347 scheduled hearing date.

348 (b) When the public owner is a county government not abolished by chapter 34 or other
349 law which holds Article XCVII land that it proposes for disposition or change in use, the county
350 commissioners shall approve such disposition or change in use and any plan to provide
351 replacement land. Such approval shall require a 2/3 vote of the county commissioners at an open
352 meeting. No vote shall be held unless the county commissioners conduct a public hearing on the
353 proposed disposition or change in use and replacement land plan. The county commissioners
354 shall provide public notice of the hearing not less than 30 days before the scheduled hearing date.

355 (c) When a public owner, other than a municipality, state agency, conservation district, or
356 unabolished county government, holds Article XCVII land it proposes for disposition or change
357 in use, the public owner shall conduct a public hearing not less than 30 days prior to its final
358 determination on the proposal and any plan to provide replacement land. A final determination to
359 authorize the proposed disposition or change in use of Article XCVII land shall be by a vote of
360 an authorized board, commission or other body of the public owner but if no such board,
361 commission or body exists, then by a written decision of the public owner's executive officer.
362 The hearing shall be conducted in the municipality where the Article XCVII land is situated. The
363 public owner shall give public notice of the hearing not less than 30 days before the scheduled
364 hearing date.

365 Section 10. The public notice required under sections 8 and 9 for each city or town in
366 which the Article XCVII land is located shall be by separate written notice to the city manager in

367 the case of a city under a Plan E form of government, the mayor and city council in the case of
368 all other cities, the chair of the board of selectmen in the case of a town, the regional planning
369 agency and the representative members of the general court.

370 Section 11. A public owner that has made a disposition or change in use of Article XCVII
371 land shall notify the secretary regarding that disposition or change of use when: (i) the public
372 owner acquires or provides any required replacement land; (ii) a temporary easement in the
373 Article XCVII land terminates; (iii) an event or act completes the Article XCVII land disposition
374 or change in use; or (iv) upon any other event or act as the secretary shall establish by regulation.
375 Such notification shall be made in such manner and shall include such information as the
376 secretary shall prescribe.

377 Section 12. Annually, the secretary shall prepare a comprehensive report describing the
378 work of the executive office relative to the protection of Article XCVII land for the preceding
379 calendar year. The report shall provide information about each disposition and change in use of
380 Article XCVII land and replacement land including, but not limited to: (i) the total number of
381 notifications received, reviews conducted and opinions provided; (ii) the total acreage and
382 description of replacement land required to prevent a no net loss of Article XCVII land; and (iii)
383 the total acreage of Article XCVII land that lost protection. The annual report shall be filed with
384 the clerks of the senate and house of representatives and the chairs of the joint committee on
385 environment, natural resources and agriculture and shall be posted on the public website of the
386 executive office not later than the first Monday of April in the following year.

387 Section 13. (a) When a public owner's Article XCVII land is taken by eminent domain,
388 the public owner shall, upon receiving the entire damage award for the taking, acquire or provide

389 suitable replacement land. The replacement land shall meet the no-net-loss requirements of
390 clauses (i) to (4), inclusive, of subsection (a) of section (2); provided, however, that the
391 replacement land required shall be limited by the total value of the award for damages sustained
392 by the public owner resulting from the land taking. The value of any land and additional funds
393 conveyed or transferred to the public owner to replace the loss of Article XCVII land which may
394 be partially or entirely in lieu of damages shall be considered an award for damages for the
395 purpose of determining the total value limitation under this subsection.

396 Before acquiring or providing replacement land, the public owner shall consult with the
397 secretary to review the proposed replacement land. The secretary shall determine whether the
398 replacement land complies with the no-net-loss requirements subject to after taking into
399 consideration the total value limitations on replacement land. The secretary shall provide the
400 public owner with an opinion as to whether the proposed replacement land is suitable.

401 The secretary may grant a full or partial waiver to a public owner to acquire or provide
402 replacement land under subsection (a) of section 4 when the public owner's Article XCVII land
403 is taken by eminent domain from the public owner. Notwithstanding the foregoing, if the
404 monetary portion of a damage award and any other compensation received by the public owner
405 are not sufficient to acquire or provide suitable replacement land, upon the public owner's
406 request, the secretary may approve using the money for other public natural resource purposes.

407 A public owner shall provide such relevant information to the secretary relative to the
408 proposed replacement land under this section as the secretary shall prescribe by regulation.

409 (b) Notwithstanding any other general law to the contrary, the secretary shall first
410 approve any interest in land conveyed or transferred to a public owner under section 7M of

411 chapter 81 if the conveyance or transfer is to replace Article XCVII land taken by eminent
412 domain from a public owner.

413 Section 14. (a) The secretary shall establish a self-subscribing email notification delivery
414 system to send informational emails to the public and government organizations about proposed
415 dispositions of Article XCVII land and recommendations of the secretary on related legislation.

416 (b) Information required under this chapter to be posted on the executive office’s public
417 website shall also be posted in the environmental monitor.

418 (c) The secretary shall charge no fee for informational emails under subsection (a) or to
419 access information posted on the executive office’s public website as required under this
420 chapter.”; and

421 By inserting after section 81 the following section:-

422 “SECTION 81A. Not later than 1 year after the effective date of this act, the secretary of
423 energy and environmental affairs shall promulgate regulations for the requirements,
424 administration and enforcement for the chapter 131B of the General Laws.”