

SENATE No. 1968

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger, (BY REQUEST)

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 relative to certain easements.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

James J. Decoulos

SENATE No. 1968

By Mr. Brownsberger (by request), a petition (accompanied by bill, Senate, No. 1968) of James J. Decoulos for legislation relative to certain easements. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2011 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to certain easements.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 PREAMBLE. By Chapter 463 of the Acts of 1869, the Legislature enfranchised all
2 Native American Indians and declared that they were citizens of the Commonwealth, entitled to
3 all the rights, privileges and duties of other citizens. The Act also affirmed that lands previously
4 set off to any Indian were to become the property of such person and his heirs in fee simple.
5 Thereafter, various acts were adopted for the disposition of common lands at Chappaquiddick,
6 Dudley, Gay Head, Herring Pond and Mashpee. The previously set off lands and the lands
7 divided from the common lands were intended to have the full rights and benefits of property
8 ownership, including the right to reasonable residential use and access.

9 SECTION 1. Notwithstanding any general or special law to the contrary, lots created for
10 the Native American Indians at Chappaquiddick, Dudley, Gay Head, Herring Pond or Mashpee,

11 and the lots created from the partition of common lands in those former Indian districts, shall be
12 deemed to have been granted in fee simple absolute with no restraint on alienation. If express
13 easements do not exist for such lots, the superior court shall have jurisdiction to establish forty-
14 foot wide easements to a public way over public lands, including land held by any land bank, for
15 vehicular access and underground utilities to such lots. If public lands are not available to
16 provide an express easement to any such lot, new forty-foot wide easements shall be created to
17 the nearest public way by the superior court, with the court establishing all the necessary parties
18 required for an equitable resolution. Such easements shall be considered ways that were in
19 existence when the subdivision control law became effective in the city or town in which the
20 land lies, providing sufficient frontage, width, suitable grades and adequate construction to
21 support the needs of vehicular traffic in relation to the residential use of the land, for adequate
22 public safety and for the installation of underground utilities to serve such land and the buildings
23 erected or to be erected thereon. The frontage of the easements shall be of such distance as is
24 required by zoning or other ordinance or by-law, to allow for residential dwellings on such lots.