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HOUSE . . . . . No. 3438

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act to protect 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:

SECTION 1. The General Laws are hereby amended by inserting after chapter 132B the following chapter:-

CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT.

Section 1. It is hereby declared to be the policy of the commonwealth that lands or easements taken or acquired for natural resource purposes, consistent with Article 97, are a vital and indispensable public natural resource and, therefore, that there shall be no net loss of public lands or easements taken or acquired for natural resource purposes as a result of disposition or change in use of these lands.

Section 2. Definitions. As used in this chapter, the following words shall have the following meanings: -

"Alternatives analysis", a description of alternatives to a proposed disposition or change in use of lands or easements protected under Article 97, including, but not limited to, an analysis of the most reasonable alternative (other than taking no action) that does not require disposition

14 or change in use under Article 97; the description of an alternative shall include analysis of cost,
15 impact on current use, environmental impact and non-financial advantages and disadvantages,
16 vis-a-vis the proposed disposition or change in use.

17 “Appraisal”, a written statement independently and impartially prepared by a state
18 certified or state licensed appraiser setting forth an opinion as to the fair market value of an
19 adequately described property as of a specific date, supported by the presentation and analysis of
20 relevant market information.

21 “Article 97”, Article XLIX, as appearing in Article XCVII, of the Amendments to the
22 Constitution.

23 “Article 97 lands or easements”, lands or easements taken or acquired for natural
24 resource purposes under Article 97.

25 “Change in use” or “used for other purposes”, a diversion of Article 97 lands or
26 easements, or portion thereof, from existing use.

27 “Disposition”, "dispose" or “disposed”, the transfer of physical or legal custody or
28 control of lands or easements, or a portion thereof, by conveying, relinquishing, leasing for any
29 term, granting of interests in, or transferring by any other means physical or legal custody or
30 control, regardless of whether the transfer is for the same or different uses, or for consistent or
31 inconsistent purposes.

32 “Fair market value”, the price, expressed in terms of cash equivalents, at which property
33 would change hands between a hypothetical willing and able buyer and a hypothetical willing
34 and able seller, acting at arm’s length in an open and unrestricted market, when neither is under

35 compulsion to buy or sell and when both have reasonable knowledge of the relevant facts, and
36 assuming the property would or could be put to its highest and best economic use.

37 "Lands or easements", lands; easements; conservation restrictions, agricultural
38 preservation restrictions and watershed preservation restrictions, as defined in section 31 of
39 chapter 184; and other restrictions or conditions contained in a deed, grant or other instrument
40 purporting to transfer or convey an interest in land, regardless of the term of such easements,
41 restrictions or conditions.

42 "Natural resource purposes", the purposes described in Article 97.

43 "Owner", the commonwealth department, agency, authority, public instrumentality, town,
44 municipality or political subdivision that owns or has care, custody or control of the lands or
45 easements for which there is a proposed disposition or change in use.

46 "Replacement land", lands or easements acquired by the owner that are of equal or
47 greater area, market value and natural resource value and of comparable location and use, as
48 compared with the Article 97 lands or easements being disposed of or changed in use; lands or
49 easements already protected under Article 97 shall not qualify as replacement land.

50 "Taken or acquired", obtained by gift, purchase, devise, grant, exchange, lease, taking by
51 eminent domain or otherwise, by the commonwealth, any of its political subdivisions or bodies
52 politic, or any instrumentality thereof, or through use of public funds, including land bank funds.

53 Section 3. It shall be the policy of the general court not to enact legislation to allow a
54 disposition or change in use of lands or easements taken or acquired for natural resource

55 purposes under Article 97, unless the owner of the lands or easements provides the general court
56 the following:

57 (a) a statement from the secretary of energy and environmental affairs as to whether the
58 lands or easements are classified as Article 97 lands or easements;

59 (b) either in the text of the proposed legislation or separately in writing a description of
60 the lands or easements, including legal description, location, name of owner, acreage, purpose
61 for which land was acquired, current use and natural resource benefits, and a description of the
62 proposed disposition or change in use, including name of any proposed grantee, purpose of the
63 proposed disposition or change in use, proposed new use, and anticipated physical changes in the
64 land or easements;

65 (c) copies of the deed conveying the lands or easements to the present owner and of any
66 restrictions on the lands or easements;

67 (d) copies of statutorily required approvals by the governing body or officer of the owner,
68 approving the disposition or change in use of the lands or easements, including, if applicable,
69 copies of required approvals by the local conservation commission, which shall have been
70 obtained prior to approval by the governing body or officer;

71 (e) either in the text of the proposed legislation or separately in writing a description of
72 the replacement land, including legal description, location, name of landowner, acreage, current
73 use, and, if the landowner is a public entity, purpose for which land was acquired;

74 (f) an alternatives analysis approved by the secretary of energy and environmental affairs;

75 (g) statements of the fair market value of the lands or easements and of the replacement
76 land, each substantiated by an appraisal;

77 (h) copies of statutorily required approvals by the governing body or officer of the owner,
78 approving the acquisition of the replacement land; and

79 (i) a statement from the secretary of energy and environmental affairs that the proposed
80 replacement land meets the requirements set forth in the definition of replacement land.

81 Section 4. Upon application of the owner, the secretary of energy and environmental
82 affairs may grant a waiver releasing the owner from the requirements set forth in sub-sections
83 (e) through (i) of Section 3, conditional upon:

84 (a) subsequent to disposition there being no change in use or physical change in the lands
85 or easements disposed other than change due to natural causes, provided the lands or easements
86 are currently serving a public natural resource purpose;

87 (b) any proposed change in use being temporary and within no more than five years from
88 the change in use the lands or easements reverting to the same state and use as existed
89 immediately prior to the change in use;

90 (c) the lands or easements proposed for disposition or change in use being occupied
91 primarily and substantially by pre-existing, non-encroaching buildings or sheds, which may
92 include immediately adjacent land containing out-buildings, paved areas or landscaped areas
93 appurtenant to, necessary for and used solely for said pre-existing buildings or sheds; or

94 (d) the lands or easements having an area of 2,500 square feet or less, the secretary of
95 energy and environmental affairs providing a statement that the lands or easements are

96 insignificant for natural resource purposes, and the lands or easements not being part of a
97 contiguous area of Article 97 lands or easements any part of which have been approved by
98 statute for disposition or change in use within the five years prior to filing of legislation
99 proposing disposition or change in use.

100 If a waiver is granted such waiver shall be provided to the general court in lieu of the
101 requirements set forth in sub-sections (e) through (i) of Section 3.

102 Section 5. Any act authorizing disposition or change in use of Article 97 lands or
103 easements shall stipulate that approval of the disposition or change in use shall be conditional
104 upon acquisition of the replacement land described in Section 3, unless a waiver has been
105 granted pursuant to Section 4. Any act authorizing disposition or change in use Article 97 lands
106 or easements subject to a waiver under conditions in Section 4(a) or Section 4(b) shall stipulate
107 that, if at any time any condition on which the waiver is based ceases to be met, title, jurisdiction,
108 control, and other rights and perquisites disposed shall revert to the owner or the change in use
109 shall become invalid and cease to have statutory approval, and any deed, lease, or other
110 instrument effecting the disposition or change in use shall so state.

111 Section 6. Any committee in the Massachusetts General Court to which has been referred
112 any bill involving dispositions or changes in use of lands or easements taken or acquired for
113 natural resources purposes under Article 97 shall, by August 31 of the second year of each
114 legislative session, each file with the clerks of the senate and house of representatives a report
115 detailing their activities on all said bills.

116 Section 7. The commonwealth or its agency, authority or instrumentality, but not
117 including municipalities, shall notify the public at least 30 days prior to filing a bill to dispose or
118 change the use of any Article 97 lands or easements.

119 SECTION 2. Within 6 months after the effective date of this act, the secretary of energy
120 and environmental affairs shall develop and publish for public review and comment guidelines
121 for conducting an alternatives analysis and identifying replacement land and within 1 year after
122 the effective date of this act shall publish the guidelines in final form.