

HOUSE No. 03420

The Commonwealth of Massachusetts

PRESENTED BY:

Kate Hogan

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 passage of the accompanying bill:

An Act relative to aviation preservation restrictions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Donald F. Humason, Jr.</i>	<i>4th Hampden</i>

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By Ms. Hogan of Stow, a petition (accompanied by bill, House, No. 3420) of Kate Hogan, Carolyn C. Dykema and Donald F. Humason, Jr. for legislation to establish within the Aeronautics Division an aviation lands preservation committee to evaluate and accept or reject aviation land preservation projects submitted by municipalities. Transportation.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to aviation preservation restrictions.

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. Section 60 of chapter 6C of the General Laws, as appearing in the 2008 Official
2 Edition, is hereby amended by adding the following sentence:-

3 The division shall establish a program to assist the commonwealth in the acquisition of aviation
4 preservation restrictions.

5 SECTION 2. Said chapter 6C of the General Laws, as so appearing, is hereby amended by
6 inserting after section 61 the following section:-

7 Section 61A. There shall be within the aeronautics division an aviation lands preservation
8 committee which shall consist of the secretary, the administrator, a representative of the aviation
9 industry and a chief elected official of both a city and a town to evaluate and accept or reject
10 aviation land preservation projects submitted by municipalities. The criteria for such projects

11 shall include the following: (1) whether the airport is sustainable; (2) that the fair market value of
12 the land is determined by independent appraisals; and (3) the degree to which the acquisition
13 would serve to preserve the aviation potential of the commonwealth.

14 SECTION 3. Section 31 of chapter 184 of the General Laws, as appearing in the 2008 Official
15 Edition, is hereby amended by adding the following paragraph:-

16 An aviation preservation restriction means a right, whether or not stated in the form of a
17 restriction, easement, covenant or condition, in any deed, will or other instrument executed by or
18 on behalf of the owner of the land appropriate to retaining land or buildings for aviation use, to
19 forbid or limit any or all construction or placing of buildings except for those used for aviation
20 purposes; and other acts or uses detrimental to such retention of the land for aviation use. Such
21 aviation preservation restrictions shall be in perpetuity except as released under the provisions of
22 section 32. All other customary rights and privileges of ownership shall be retained by the
23 owner including the right of privacy and the right to carry out all regular aviation practices

24 SECTION 4. Chapter 184 of the general laws is hereby amended by striking out section 32 and
25 inserting in place thereof the following section:-

26 Section 32. No conservation restriction, agricultural preservation, watershed preservation
27 restriction as defined in section 31, held by any governmental body or by a charitable corporation
28 or trust whose purposes include conservation of land or water areas or of a particular such area,
29 no preservation restriction, as defined in said section 31, held by any governmental body or by a
30 charitable corporation or trust whose purposes include preservation of buildings or sites of
31 historical significance or of a particular such building or site, no affordable housing restriction
32 as defined in said section 31, held by any governmental body or by a charitable corporation or

33 trust whose purposes include creating or retaining or assisting in the creation or retention of
34 affordable rental or other housing for occupancy by persons or families of low or moderate
35 income and no aviation preservation restriction as defined in section 31 held by any
36 governmental body or by a charitable corporation or trust whose purposes include aviation or of
37 a particular such aviation area, shall be unenforceable on account of lack of privity of estate or
38 contract or lack of benefit to particular land or on account of the benefit being assignable or
39 being assigned to any other governmental body or to any charitable corporation or trust with like
40 purposes, or on account of the governmental body the charitable corporation or trust having
41 received the right to enforce the restriction by assignment, provided (a) in case of a restriction
42 held by a city or town or a commission, authority or other instrumentality thereof it is approved
43 by the secretary of environmental affairs if a conservation restriction, the commissioner of the
44 metropolitan district commission if a watershed preservation restriction, the commissioner of
45 food and agriculture if an agricultural preservation restriction, the Massachusetts historical
46 commission if a preservation restriction, the director of housing and community development if
47 an affordable housing restriction, or the administrator of the aeronautics division of the
48 Massachusetts department of transportation if an aviation preservation restriction and (b) in case
49 of a restriction held by a charitable corporation or trust it is approved by the mayor, or in cities
50 having a city manager the city manager, and the city council of the city, or selectmen or town
51 meeting of the town, in which the land is situated, and the secretary of environmental affairs if a
52 conservation restriction, the commissioner of the metropolitan district commission if a watershed
53 preservation restriction, the commissioner of food and agriculture if an agricultural preservation
54 restriction, the Massachusetts historical commission if a preservation restriction, the director of
55 housing and community development if an affordable housing restriction, or the administrator of

56 the aeronautics division of the Massachusetts department of transportation if an aviation
57 preservation restriction.

58 Such conservation, preservation, agricultural preservation, watershed preservation and affordable
59 housing restrictions are interests in land and may be acquired by any governmental body or such
60 charitable corporation or trust which has power to acquire interest in the land, in the same
61 manner as it may acquire other interests in land. The restriction may be enforced by injunction or
62 other proceeding, and shall entitle representatives of the holder to enter the land in a reasonable
63 manner and at reasonable times to assure compliance. If the court in any judicial enforcement
64 proceeding, or the decision maker in any arbitration or other alternative dispute resolution
65 enforcement proceeding, finds there has been a violation of the restriction or of any other
66 restriction described in clause (c) of section 26 then, in addition to any other relief ordered, the
67 petitioner bringing the action or proceeding may be awarded reasonable attorneys' fees and costs
68 incurred in the action proceeding. The restriction may be released, in whole or in part, by the
69 holder for consideration, if any, as the holder may determine, in the same manner as the holder
70 may dispose of land or other interests in land, but only after a public hearing upon reasonable
71 public notice, by the governmental body holding the restriction or if held by a charitable
72 corporation or trust, by the mayor, or in cities having a city manager the city manager, the city
73 council of the city or the selectmen of the town, whose approval shall be required, and in case of
74 a restriction requiring approval by the secretary of environmental affairs, the Massachusetts
75 historical commission, the director of the division of water supply protection of the department
76 of conservation and recreation, the commissioner of food and agriculture, or the director of
77 housing and community development, only with like approval of the release.

78 No restriction that has been purchased with state funds or which has been granted in
79 consideration of a loan or grant made with state funds shall be released unless it is repurchased
80 by the land owner at its then current fair market value. Funds so received shall revert to the fund
81 sources from which the original purchase, loan, or grant was made, or, lacking such source, shall
82 be made available to acquire similar interests in other land. Agricultural preservation restrictions
83 shall be released by the holder only if the land is no longer deemed suitable for agricultural or
84 horticultural purposes or unless two-thirds of both branches of the general court, by a vote taken
85 by yeas and nays, vote that the restrictions shall be released for the public good. Watershed
86 preservation restrictions shall be released by the holder only if the land is deemed by the
87 commissioner of the metropolitan district commission and the secretary of environmental affairs
88 to no longer be of any importance to the water supply or potential water supply of the
89 commonwealth or unless two-thirds of both branches of the general court, by a vote taken by
90 yeas and nays, vote that the restrictions shall be released for the public good.

91 Approvals of restrictions and releases shall be evidenced by certificates of the secretary of
92 environmental affairs or the chairman, clerk or secretary of the Massachusetts historical
93 commission, or the commissioner of food and agriculture, or the director of housing and
94 community development or the city council, or selectmen of the town, as applicable duly
95 recorded or registered.

96 In determining whether the restriction or its continuance is in the public interest, the
97 governmental body acquiring, releasing or approving shall take into consideration the public
98 interest in such conservation, preservation, watershed preservation, agricultural preservation or
99 affordable housing and any national, state, regional and local program in furtherance thereof, and

100 also any public state, regional or local comprehensive land use or development plan affecting the
101 land, and any known proposal by a governmental body for use of the land.

102 This section shall not be construed to imply that any restriction, easement, covenant or condition
103 which does not have the benefit of this section shall, on account of any provisions hereof, be
104 unenforceable. Nothing in this section or section 31 and section 33 shall diminish the powers
105 granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise
106 to use land for public purposes.

107 Nothing in this section shall prohibit the department of public utilities or the department of
108 telecommunications and cable from authorizing the taking of easements for the purpose of utility
109 services provided that (a) said department shall require the minimum practicable interference
110 with farming operations with respect to width of easement, pole locations and other pertinent
111 matters, (b) the applicant has received all necessary licenses, permits, approvals and other
112 authorizations from the appropriate state agencies, (c) the applicant shall compensate the owner
113 of the property in the same manner and the same fair market value as if the land were not under
114 restriction.