

HOUSE No. 4422

The Commonwealth of Massachusetts

By Mr. Straus of Mattapoisett, for the committee on Environment, Natural Resources and Agriculture, on Senate, No. 396 and House, No. 3438, a Bill Act to protect the natural resources of the Commonwealth (House, No. 4422). January 6, 2010.

An Act to protect the natural resources of the Commonwealth.

FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
William M. Straus	10th Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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:

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

3 CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT.

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

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

11 “Alternatives analysis”, a description of alternatives to a proposed disposition or change in use of
12 lands or easements protected under Article 97, including, but not limited to an analysis of the
13 most reasonable alternative (other than taking no action) that does not require a disposition or
14 change in use under Article 97; the description of an alternative shall include analysis of cost,
15 impact on current use and environmental impact.

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

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

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

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

27 “Lands or easements”, lands; easements; conservation restrictions, agricultural preservation
28 restrictions and watershed preservation restrictions, as defined in section 31 of chapter 184; and
29 other restrictions or conditions contained in a deed, grant or other instrument purporting to
30 transfer or convey an interest in land, regardless of the term of such easements, restrictions or
31 conditions.

32 “Natural resource purposes”, the purposes described in Article 97.

33 “Owner”, the commonwealth department, agency, authority, public instrumentality, town,
34 municipality or political subdivision that owns or has care, custody or control of the lands or
35 easements for which there is a proposed disposition or change in use.

36 “Replacement land”, lands or easements acquired by the owner that are of equal or greater area,
37 market value and natural resource value and of comparable location and use, as compared with
38 the Article 97 lands or easements being disposed of or used for other purposes; lands or
39 easements already protected under Article 97 shall not qualify as replacement land.

40 “Taken or acquired”, obtained by gift, purchase, devise, grant, exchange, lease, taking by
41 eminent domain or otherwise, by the commonwealth, any of its political subdivisions or bodies
42 politic, or any instrumentality thereof, or through use of public funds, including land bank funds.

43 Section 3. It shall be the policy of the general court not to enact legislation to allow a disposition
44 or change in use of lands or easements taken or acquired for natural resource purposes under
45 Article 97, unless the owner of the lands or easements provides the general court the following:-

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

48 (b) a metes and bounds description of the lands or easements;

49 (c) a copy of the deed conveying the lands or easements to the present owner;

50 (d) a statement of the market value, as defined in 12 CFR 323.2(g), of the lands or easements that
51 is substantiated by an appraisal, as defined in 12 CFR 323.2(a), which meets the minimum
52 appraisal standards set forth in 12 CFR 323.4 and which is prepared by a state certified or state
53 licensed appraiser, as defined in 12 CFR 323.2(j)-(k);

54 (e) copies of statutorily required approvals by the governing body or officer of the owner,
55 approving the disposition or change in use of the lands or easements and the acquisition of

- 56 replacement land, including, if applicable, copies of required approvals by the local conservation
57 commission, which shall have been obtained prior to approval by the governing body or officer;
- 58 (f) an alternatives analysis approved by the secretary of energy and environmental affairs;
- 59 (g) a metes and bounds description of the replacement land;
- 60 (h) a copy of a signed offer, signed purchase and sale agreement, fully executed lease, deed or
61 other legal documents for the conveyance of the replacement land;
- 62 (i) a statement of the market value, as defined in 12 CFR 323.2(g), of the replacement land that is
63 substantiated by an appraisal, as defined in 12 CFR 323.2(a), which meets the minimum
64 appraisal standards set forth in 12 CFR 323.4, and which is prepared by a state certified or state
65 licensed appraiser, as defined in 12 CFR 323.2(j)-(k);
- 66 (j) a statement from the secretary of energy and environmental affairs that the proposed
67 replacement land meets the requirements set forth in the definition of replacement land.

68 Section 4. Upon application of the owner, the secretary of energy and environmental affairs may
69 grant a waiver releasing the owner from the replacement land requirements, set forth in sub-
70 sections (g) through (j) of Section 3, conditional upon (a) subsequent to disposition there being
71 no change in use or physical change in the lands or easements disposed other than change due to
72 natural causes; (b) any proposed change in use being temporary and within no more than five
73 years from the change in use the lands or easements reverting to the same state and use as existed
74 immediately prior to the change in use; or (c) the lands or easements proposed for disposition or
75 change in use being occupied by pre-existing buildings or sheds, which may
76 include immediately adjacent land containing out-buildings, paved areas or landscaped areas
77 appurtenant to, necessary for and used solely for said pre-existing buildings or sheds. If a waiver
78 is granted such waiver shall be provided to the general court in lieu of the requirements set forth
79 in sub-sections (g) through (j) of Section 3. Any act authorizing disposition or change in use
80 subject to a waiver under condition (a) or (b) of this section shall require that, if at any time said
81 condition on which the waiver is based ceases to be met, title, jurisdiction, control, and other
82 rights and perquisites disposed shall revert to the owner and the change in use shall become
83 invalid and cease to have statutory approval. Any deed, lease, or other instrument effecting the
84 disposition or change in use shall so stipulate the provisions of this section.

85 Section 5. The joint committee on bonding, capital expenditures and state assets and the joint
86 committee on municipalities and regional government shall each file a report by August 30 of the
87 second year of each legislative session with the clerks of the senate and house of representatives
88 detailing their activities on all bills referred to them that involve dispositions or changes in use of
89 lands or easements taken or acquired for natural resources purposes under Article 97.

90 Section 6. The commonwealth or its agency, authority or instrumentality shall notify the public
91 at least 30 days prior to filing a bill to dispose or change the use of any Article 97 lands or
92 easements.

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

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