

SENATE No. 2938

Message from Her Excellency the Governor (pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts) returning with recommendation of amendment to the engrossed Bill providing of the disposition of certain property in the town of Upton (Senate, No. 2933)



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To the Honorable Senate and House of Representatives,

Pursuant to Article LVI, as amended by Section 3 of Article XC, of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Senate Bill No. S.2933, “An Act providing of the disposition of certain property in the town of Upton.”

The Bill would amend certain sections of Chapter 156 of the Acts of 2005, which was enacted to address encroachment by a landfill on the Upton State Forest. The Upton State Forest is a 2,660-acre forest controlled by the Department of Conservation and Recreation (DCR), located in the Town of Upton and adjacent towns, and protected by Article 97 of the amendments to the Massachusetts Constitution. The amendment to Chapter 156 directs the Division of Capital Asset Management and Maintenance (DCAMM), in consultation with DCR, to convey the affected land to the landfill operator responsible for the encroachment, and to accept replacement land as mitigation.

The Bill directs, rather than authorizes, the conveyance of the land described therein, and so appears to assume that the land identified to mitigate for past contamination is itself free of landfill contamination and suitable for dedication to Article 97 purposes. While the contemplated replacement land appears consistent with two parcels listed in Chapter 156 of the Acts of 2005, DCAMM and DCR have not had a recent opportunity to conduct on-site evaluation or other due diligence. As such, DCAMM and DCR are unfamiliar with the current state of the contemplated replacement land and cannot be confident that the land is presently free

of contamination and safe for the public. While the land may ultimately be acceptable to DCAMM and DCR, it is important that the agencies be afforded an opportunity to conduct appropriate diligence before any conveyances take place.

The Bill also requires the Commonwealth to accept \$25,000 in mitigation, payable to the Conservation Trust established in Chapter 132A, to satisfy the obligations of the landfill operator for its past trespass, encroachment and contamination of state land. Upon payment, the operator would receive liability relief in relation to all its prior landfill operations that encroached on and contaminated state land, including operations that resulted in the disposal of solid and hazardous waste materials on the state land. While this requirement resembles a provision that appeared in Chapter 156 of the Acts of 2005, a \$25,000 payment may no longer appropriately value the known existing contamination of state lands.

Finally, the Bill also changes the existing requirements of Chapter 156 of the Acts of 2005 for an appraisal of the land by DCAMM. These existing requirements reflect important protections to ensure that the Commonwealth obtains adequate and complete compensation for the conveyances described in the Bill.

For the reasons stated above, I recommend that S.2933 be struck in its entirety and replaced with the following:-

Chapter 156 of the acts of 2005 is hereby amended by striking out sections 1 through 3, and inserting in place thereof the following sections:

“SECTION 1. The commissioner of capital asset management and maintenance, in consultation with the department of conservation and recreation, may, notwithstanding sections 32 through 37 of chapter 7C of the General Laws, convey by deed 2 parcels of land off of Maple Avenue in the town of Upton, presently under the care, custody and control of the department, to the Upton Development Group, Ltd., or its nominee. The parcels are shown on a plan of land entitled "Approval Not Required Plan of Land Maple Avenue, Hartford Avenue, 9 Glen Avenue Upton, Massachusetts, Worcester County" dated October 13, 2013, prepared by 10 Geo/Network Land Survey, Inc. The exact boundaries of the parcels shall be determined by the commissioner in consultation with the department.

SECTION 2. In consideration of the conveyance provided for in section 1, the division of capital asset management and maintenance shall receive from the recipient, conveyance of 2 parcels of land to be placed under the care, custody and control of the department of conservation and recreation, to be used for conservation purposes. The parcels are shown on a plan of land entitled "Approval Not Required Plan of Land Maple Avenue, Hartford Avenue, 17 Glen Avenue Upton, Massachusetts, Worcester County" dated October 13, 2013, prepared by 18 Geo/Network Land Survey, Inc. The exact boundaries of the parcels shall be determined by the commissioner in consultation with the department and recipient.

SECTION 3. If the land described in section 2 is determined to be unacceptable to the division of capital asset management and maintenance, in consultation with the department of conservation and recreation, due to environmental contamination, Upton Development Group, Ltd. or its nominee shall convey to the division alternative suitable replacement land, with an equal or greater acreage and natural resource value as the land described in section 2, which is acceptable to the division, in consultation with the department, and which shall be placed under the care, custody and control of the department to be used for conservation purposes.”

Respectfully submitted

Maura T. Healey,
Governor