

AN ACT TO PROTECT THE NATURAL AND HISTORIC RESOURCES OF THE COMMONWEALTH

Sponsor: Senator Pam Resor (D-Acton)

Challenge

In 1972, Massachusetts voters approved an amendment to the state Constitution, Article 97, granting people the right to a clean environment (see full text on back). Article 97 further requires that any land or easements taken or acquired for natural resource purposes shall not be used for other purposes unless the Massachusetts legislature approves the change by a two-thirds vote. Article 97 was intended to be a legislative 'check' to ensure that lands acquired for conservation purposes were not converted to other inconsistent uses.

However, communities faced with the need for new schools, recreational facilities, and other public infrastructure are frequently turning to land set aside for conservation or parkland as building sites. Article 97 votes have become routine legislative business, with nearly every land transfer proposal brought up for a vote approved unanimously. Roll call votes on land transfers have constituted over twenty percent of all roll call votes taken in the legislature in the past several years.

The majority of conversion proposals diminish the quality of natural resources on the subject lands. The Massachusetts Public Interest Research Group documented in its 2001 report, "This Land is Not Your Land", that the Legislature approved 280 Article 97 land transfers between 1989 and March, 2002. Thirty-three percent of these transfers converted public open space to private development, while an additional fourteen percent transferred conservation land for municipal roads, water and sewer systems.

Solution

This legislation declares that it is the policy of the Commonwealth that there should be no-net loss of lands or easements protected under Article 97. The bill establishes the statutory framework, pursuant to the constitution, to guide legislators' decisions on whether to approve bills that would transfer state- or municipal-owned Article 97 lands or easements to a new but inconsistent public use, to a different public management authority, or from public to private ownership:

- All dispositions and changes in use of lands or easements taken or acquired for natural resource purposes must be appropriately mitigated to ensure that the disposition or change in use does not result in a net loss of lands and easements.
- Compensation must be paid in terms of acreage and value, either fair market value or value in proposed use, whichever is greater.
- Any deed, or other instrument conveying interest in lands or easements for natural resource purposes must contain a statement identifying those purposes.
- Each land transfer petition must provide a description and the acreage of the subject lands or easements, as well as a statement of the present public uses and the proposed new uses.

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In addition,

- Each petition must disclose whether the transfer is under review of the Massachusetts Environmental Policy Act (MEPA), and whether the lands or easements are eligible for listing on the state register of historic places.
- Additional documentation must accompany each land transfer petition demonstrating and certifying the alternative locations that were considered, and how any lands or easements taken or acquired for mitigation are consistent with local open space and master plans.
- Densely populated cities are allowed flexibility in conducting an alternatives analysis and providing mitigation for proposed school construction projects on Article 97 lands, in recognition of the shortage of available replacement lands and increased costs for construction and renovation in these areas.

Benefits

Over the past decade, the Commonwealth has spent over a billion dollars to acquire open space. Taxpayers' money has been used to preserve watershed lands, farmlands, historic and recreational areas, and wildlife habitats. Once the Commonwealth or a municipality makes an investment of taxpayers' money in open space, that investment should be maintained for the purpose it was originally acquired.

This legislation preserves taxpayers' investments to provide a conservation legacy for future generations. The long-term protection of natural areas is vital for the economic well-being of the Commonwealth. Watershed lands filter contaminants, reducing the need for expensive treatment plants. Urban parks provide solace from the congestion of cities. Agricultural lands provide us with fresh food. Outdoor recreation, tourism, agriculture, and forestry provide significant revenue and jobs in Massachusetts. Independent studies have concluded that the quality of life within a community is one of the most important criteria that businesses consider when relocating and seeking to attract employees.

When a community's most treasured places are preserved, so too are its history and character. We must not allow short-term demands to sacrifice this legacy.

Full text of Article 97 of the Amendments to the Constitution of Massachusetts

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air, and other natural resources is hereby declared to be a public purpose.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

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In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two-thirds vote, taken by yeas and nays, of each branch of the general court.

For more information about this bill, contact Christopher Hardy, Mass Audubon's Director of Legislative Affairs, at 617-523-8448 or chardy@massaudubon.org.

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