

HOUSE No. 5381

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2831) of the House Bill preserving open space in the Commonwealth (House, No. 851), reports recommending passage of the accompanying bill (House, No. 5381). November 8, 2022.

Ruth B. Balse	Sal N. DiDomenico
James J. O'Day	James B. Eldridge
Susan Williams Gifford	

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**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act preserving open space in 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. Chapter 3 of the General Laws is hereby amended by inserting after section
2 5 the following section:-

3 Section 5A. (a) In order to use for another purpose or otherwise dispose of land, an
4 easement or other real property interest subject to Article XCVII of the Amendments to the
5 Constitution of the Commonwealth, a public entity, which for the purposes of this section shall
6 include the commonwealth, any agency, authority, board, bureau, commission, committee,
7 council, county, department, division, institution, municipality, officer, quasi-public agency,
8 public instrumentality or any subdivision thereof shall: (i)(A) notify the public and the secretary
9 of energy and environmental affairs and conduct an alternatives analysis demonstrating that all
10 other options to avoid or minimize said Article XCVII disposition or change in use have been
11 explored and no feasible or substantially equivalent alternative exists; and (B) submit the
12 analysis to the secretary of energy and environmental affairs and make the analysis public; (ii)
13 identify replacement land or an interest in land, which is not already subject to said Article
14 XCVII, in a comparable location and that is of equal or greater natural resource value, as

15 determined by the secretary of energy and environmental affairs, and acreage and monetary
16 value, as determined by an appraisal of the fair market value or value in use, whichever is
17 greater; and (iii) take, acquire or dedicate the replacement land or interest in said land identified
18 pursuant to clause (ii) in perpetuity for said Article XCVII purposes. Upon request of a public
19 entity seeking to use for another purpose or otherwise dispose of land, an easement or another
20 real property interest subject to said Article XCVII, the secretary of energy and environmental
21 affairs may waive or modify the replacement land requirement pursuant to clauses (ii) and (iii) of
22 the first sentence if: (A) the disposition involves only the transfer of legal control between public
23 entities as described in this subsection and does not involve any other change, including, but not
24 limited to, a change allowing the land to be used for another purpose; or (B) the transfer is of a
25 parcel that is of insignificant natural resource and recreation value and is less than 2,500 square
26 feet in area and the transfer serves a significant public interest.

27 (b)(1) Notwithstanding clause (iii) of subsection (a), a public entity seeking to change the
28 use of or otherwise dispose of land subject to Article XCVII of the Amendments to the
29 Constitution of the Commonwealth may provide funding in lieu of replacement land, or a
30 combination of funding and replacement land or an interest in land, if the secretary of energy and
31 environmental affairs has reported to the legislature an explicit finding that: (i) the proposed
32 change in use or disposition serves a significant public interest; (ii) the proposed change in use or
33 disposition will have no adverse impacts on an environmental justice population, as defined in
34 section 62 of chapter 30 of the General Laws; (iii) the alternatives analysis required by said
35 subsection (a) has been submitted to the secretary of energy and environmental affairs and
36 subjected to public notice and comment and said analysis demonstrates that all other options to
37 avoid or minimize the disposition or change in use have been explored and no feasible or

38 substantially equivalent alternative exists for reasons specifically stated; and (iv) it is not feasible
39 to contemporaneously designate replacement land that satisfies the requirements of said
40 subsection (a).

41 (2) If a public entity provides funding in lieu of or in combination with replacement land,
42 the following conditions shall be met: (i) the amount of funding provided shall be not less than
43 110 per cent of the fair market value or value in use of the Article XCVII land, whichever is
44 greater, as determined by the secretary of energy and environmental affairs after an independent
45 appraisal; (ii) the funding provided to change the use of or otherwise dispose of: (A) municipal
46 land shall be held in the municipality's Community Preservation Fund and dedicated solely for
47 the acquisition of land for Article XCVII purposes or another already established municipal
48 account for land preservation purposes or, if the municipality lacks such a fund, in a segregated
49 account and dedicated solely for the acquisition of land for Article XCVII purposes; and (B)
50 commonwealth land shall be held in a fund for acquiring Article XCVII land; and (iii) the funds
51 shall be used within 3 years to acquire replacement land in a comparable location and dedicated
52 in perpetuity for Article XCVII purposes; provided, however, that replacement lands acquired
53 with in lieu funds shall be of equal or greater natural resource value, as determined by the
54 secretary of energy and environmental affairs, and acreage and monetary value, as determined by
55 an independent appraisal of the fair market value or value in use, whichever is greater.

56 (3) The secretary of energy and environmental affairs shall annually issue a report of all
57 of the instances in which funding was provided in lieu of replacement land in exchange for a
58 change in the use of or disposition of an interest in land taken, acquired or designated for
59 purposes pursuant to Article XCVII of the Amendments to the Constitution of the
60 Commonwealth including the amount of funds provided, the account into which the funds were

61 deposited, whether the funds were expended to acquire replacement land and, if so, a description
62 of the land that was acquired. Said report shall be submitted annually not later than December
63 15th to the clerks of the senate and house of representatives and made available on the executive
64 office of energy and environmental affairs' website.

65 (c) A petition to the general court to authorize the use for another purpose or other
66 disposition of land, an easement or another real property interest subject to Article XCVII of the
67 Amendments to the Constitution of the Commonwealth shall be accompanied by: (i) an
68 alternatives analysis conducted pursuant to subsection (a); (ii) a description of the replacement
69 land or interest in land to be dedicated pursuant to said subsection (a), if not waived pursuant to
70 said subsection (a); (iii) a copy of the appraisal required by said subsection (a); (iv) a copy of any
71 waiver or modification granted pursuant to said subsection (a); and (v) if applicable, a copy of
72 the report of the findings of the secretary of energy and environmental affairs required by
73 paragraph (1) of subsection (b).

74 SECTION 2. The secretary of energy and environmental affairs shall promulgate
75 regulations to implement subsections (a) and (b) of section 5A of chapter 3 of the General Laws
76 within 18 months after effective date of this act.