

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Seven

AN ACT RELATIVE TO THE LICENSING REQUIREMENTS FOR CERTAIN TIDELANDS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith authorize a regulatory exemption for certain landlocked tidelands from license requirements, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1.

Whereas, the deferred operation of this act would defeat its purpose, which is to exempt structures, uses and activities within landlocked tidelands from licensing under chapter 91 of the General Laws, while ensuring that certain public trust rights to landlocked tidelands and other tidelands are properly evaluated and addressed through state environmental review; and

Whereas, the supreme judicial court has held that the department of environmental protection lacks statutory authority to exempt landlocked tidelands from the licensing requirements established by chapter 91 of the General Laws; and

Whereas, the supreme judicial court has stated with respect to legislation dealing with public assets that: (i) the legislation must be explicit concerning the land involved; (ii) it must acknowledge the interest being surrendered; (iii) it must recognize the public use to which the land is to be put; (iv) the action must be for a valid public purpose; and (v) where there may be benefits to private parties, those private benefits must not be primary but merely incidental to the achievement of the public purpose; and

Whereas, exempting existing and future uses, structures, and improvements on landlocked tidelands from the licensing requirements established by chapter 91 of the General Laws, serves proper public purposes, including, but not limited to, maintaining marketable titles, continuing the beneficial redevelopment and revitalization of landlocked tidelands, and encouraging public access to the waterfront; and

Whereas, the benefits to private parties are not primary but rather are incidental to the achievement of the public purposes.

SECTION 2. Section 61 of chapter 30 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the word "grounds" in line 16, the following words:- , reduction of groundwater levels, impairment of water quality, increases in flooding or storm water flows.

SECTION 3. Said chapter 30 is hereby further amended by inserting after section 62H the following section:-

Section 62I. A person who is proposing a new use or structure or modification of an existing use or structure within landlocked tidelands as defined in section 1 of chapter 91 that is otherwise required to file an environmental notification form pursuant to section 62A and files an environmental notification form on or after November 15, 2007, shall comply with the requirements of this paragraph. The environmental notification form, and an environmental impact report required pursuant to section 62B, if applicable, shall include an explanation of the project's impact on the public's right to access, use and enjoy tidelands that are protected by chapter 91, and identify measures to avoid, minimize, or mitigate any adverse impact on such rights set forth herein. If the project is located in an area where low groundwater levels have been identified by a municipality or by a state or federal agency as a threat to building foundations, the environmental notification form and an environmental impact report if the latter is required, shall also include an explanation of the project's impact on groundwater levels, and identification and commitment to taking measures to avoid, minimize, or mitigate any adverse impact on groundwater levels. Any measures identified by the secretary under this section shall be set forth in a certificate on the environmental notification form or a certificate on the environmental impact report, if the latter is applicable. Within 30 days after a certificate is issued under this paragraph, the proponent of the project shall file with the department of environmental protection a completed form notifying the department that work will be conducted within landlocked tidelands, and shall attach the Massachusetts environmental policy act certificate to the form. The person who is proposing shall comply with all obligations set forth in the certificate under this section, and the department shall have the authority to enforce such conditions consistent with this chapter.

SECTION 4. Section 1 of chapter 91 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the definition of "Department" the following definition:-

"Landlocked tidelands", filled tidelands, which on January 1, 1984 were entirely separated by a public way or interconnected public ways from any flowed tidelands, except for any portion of such filled tidelands that are

presently located: (a) within 250 feet of the high water mark of flowed tidelands; or (b) within any designated port area under the Massachusetts coastal zone management program. For the purposes of this definition, a public way may also be a landlocked tideland, except for any portion thereof which is presently within 250 feet of the high water mark of flowed tidelands.

SECTION 5. Said section 1 of said chapter 91, as so appearing, is hereby further amended by inserting after the definition of "Private tidelands" the following definition:-

"Secretary," the secretary of the executive office of energy and environmental affairs.

SECTION 6. Section 18 of said chapter 91, as so appearing, is hereby amended by inserting after the third paragraph the following paragraph:-

No license shall be required under this chapter for fill on landlocked tidelands, or for uses or structures within landlocked tidelands.

SECTION 7. Said section 18 of said chapter 91, as so appearing, is hereby further amended by inserting after the word "tidelands", in lines 52 and 53, the following words:- , except for landlocked tidelands.

SECTION 8. Said chapter 91 is hereby further amended by inserting after section 18A the following section:-

Section 18B. (a) The secretary shall serve as the administrator of tidelands. The secretary may appoint an individual or individuals to assist him in carrying out the duties of his office. The duties of this office may be exercised in combination with other duties, as the secretary shall see fit.

(b) The secretary shall conduct and complete a public benefit review for any proposed project that is: (i) subject to the licensing provisions of section 13 or 18; or (ii) geographically located on landlocked tidelands, and in either case is required to file hereafter an environmental impact report pursuant to chapter 30. The secretary may conduct and complete a public benefit review for any proposed project that is: (i) subject to the licensing provisions of said section 13 or 18; or (ii) geographically located on landlocked tidelands and in either case is required to file hereafter an environmental notification form pursuant to chapter 30. The public benefit determination of the secretary shall not supersede said chapter 30 or this chapter or any rules or regulations promulgated pursuant thereto and shall not delay the issuance of a license pursuant to this chapter or the completion of a review or any step thereof pursuant to said chapter 30. At the completion of said review, the secretary shall make a public benefit determination, the goal of which shall be to publish on the public record a written public benefit determination of the project.

In making said public benefit determination, the secretary shall consider the purpose and effect of the development; the impact on abutters and the surrounding community; enhancement to the property; benefits to the public trust rights in tidelands or other associated rights, including, but not limited to, benefits provided through previously obtained municipal permits; community activities on the development site; environmental protection and preservation; public health and safety; and the general welfare; provided further, that the secretary shall also consider the differences between tidelands, landlocked tidelands and great ponds lands when assessing the public benefit and shall consider the practical impact of the public benefit on the development.

The secretary shall promulgate regulations that may, among other things, exempt from the public benefit determination process the development of certain parcels of land, or certain activities, uses and structures on the land that are determined to be of *de minimus* impact. The regulations shall also establish timelines and procedures for the public benefit review, and the regulations may combine the public benefit review with the environmental review under chapter 30.

Any state or local agency holding a public comment period pursuant to chapter 30 or this chapter shall provide copies of all written testimony submitted during said public comment period to the secretary.

The secretary shall provide the determination of public benefit to the department, and if there is an appeal of a decision or license issued by the department, to the division of administrative law appeals.

The department shall incorporate the public benefit determination of the secretary in the official record.

(c) The secretary shall designate an individual to serve as the chapter 91 public information officer. The chapter 91 public information officer shall answer questions about the chapter 91 process, providing history and context regarding chapter 91 and the public benefits process as it pertains to this chapter.

SECTION 9. Notwithstanding any general or special law to the contrary, the fourth paragraph of section 18 of chapter 91 of the General Laws, inserted by section 6, shall apply to all fill, uses and structures, whether existing before, on or after the effective date of this act.

SECTION 10. Notwithstanding any general or special law to the contrary, regulations issued by the department of environmental protection exempting landlocked tidelands from licensing before the effective date of this act are hereby validated and confirmed as if this act had been in effect when such regulations and determinations of applicability were issued. Any fill, use or

structure developed pursuant to such regulations shall not be subject to challenge on the ground that the department of environmental protection lacked the authority to issue such regulations and, any fill, use or structure hereafter developed pursuant to any such previously issued determination of applicability in the negative shall not be subject to review under chapter 91 of the General Laws.

SECTION 11. The department of environmental protection shall undertake a study of ground and surface water flow and drainage in the sections of the cities of Cambridge, Somerville and Boston formerly identified as the Miller's River. This report shall be filed with the clerks of the house of representatives and the senate on or before December 31, 2008, and an interim report shall be filed on or before April 1, 2008.

House of Representatives, November 1, 2007.

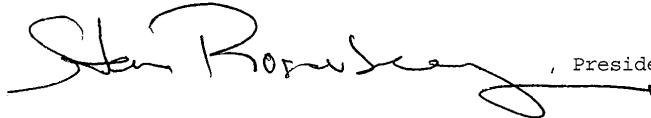
Preamble adopted,



, Speaker.

In Senate, November 1, 2007.

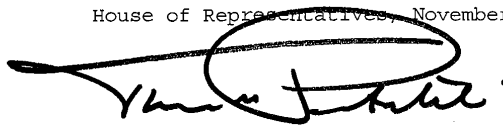
Preamble adopted,



, President.

House of Representatives, November 1, 2007.

Bill passed to be enacted,



, Speaker.

In Senate, November 5, 2007.

Bill passed to be enacted,



, President.

15 November, 2007.

Approved,

at 12 o'clock and 50 minutes, P. M.

  
Governor.