

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-Six AN ACT PROVIDING PROTECTION FOR THE RIVERS OF THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately protect the commonwealth's rivers, streams and adjacent lands, 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. The purposes of this act are to protect the private or public water supply; to protect the ground water; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries.

It shall be the policy of the commonwealth to protect the natural integrity of its rivers; provided, however, that, the commonwealth shall, subject to appropriation, encourage and support the establishment of a system of open space lands along the rivers as defined herein consistent with the purposes of this act. This act shall be interpreted and administered consistent with its purposes as stated in this section.

Nothing in the act shall be construed to compromise or in any way diminish the projections and exemptions provided for in section forty of chapter one hundred and thirty-one of the General Laws and

regulations promulgated thereunder; and provided further, that such projections and exemptions shall extend to the riverfront area as defined in this act.

SECTION 2.

EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS.

Department of Fisheries, Wildlife and Environmental Law Enforcement

2300-8970 For the acquisition of lands fronting on rivers and streams pursuant to section eight of this act..\$30,000,000

SECTION 3. Notwithstanding the provisions of any general or special law or any rule or regulation to the contrary, activities associated with the renovation of cranberry bogs on property currently in agricultural use, which have been abandoned since nineteen hundred and fifty-nine shall be allowed as provided below not to exceed five acres in three years on land in common ownership; provided, however, that renovation of such bogs shall not adversely impact the habitat of endangered or threatened species as defined by the Natural Heritage and Endangered Species Program, be located within a defined Zone II aquifer, be located within an area of critical environmental concern, or contain a navigable stream as defined by chapter ninety-one. All activities shall be conducted in accordance with USDA Natural Resources Conservation Service standards and Best Management Practices for Massachusetts Cranberry Experiment Station and approved by the USDA Natural Resources Conservation Service, where applicable. The cranberry farm shall have in place a USDA Natural Resources Conservation Service approved Conservation Farm Plan prior to the commencement of renovation of said abandoned bogs.

The department of environmental protection shall implement by regulation, no later than December first, nineteen hundred and ninety-six, the provisions of this section providing for a permit process for the review and necessary conditioning for the renovation of eligible abandoned cranberry bogs as defined herein and for appropriate fees and performance standards relative thereto; said regulations shall provide that review for such permits shall consider the provisions in this section and the impacts of the renovation; the department is authorized to issue as apart of any reviews pursuant to this section, such conditions as are necessary to protect the interests identified in this act.

The department of environmental protection is directed to undertake a review and prepare an inventory of abandoned cranberry bogs in the commonwealth which have been abandoned since nineteen hundred and fifty-nine and report to the joint committee on natural resources and agriculture such information by December first, nineteen hundred and ninety-six, including in such report appropriate recommendations on the feasibility and impacts to the environment of authorizing for renovation said abandoned cranberry bogs as it has inventoried pursuant to this paragraph.

Nothing in this section shall supersede the powers of any city or town to regulate the renovation of abandoned bogs.

SECTION 4. The commissioner of the department of environmental protection shall, within one year of the effective date of this act, adopt such regulations as are deemed necessary to carry out the purposes of this act. Such regulations shall include, but not be limited to, provisions setting forth (1)

procedures required to implement this act, and (2) reasonable fees to be charged by local bodies in administering the terms of this act. All final rules and regulation promulgated hereunder shall be filed with the joint committee on natural resources and agriculture sixty days prior to their effective date and all emergency rules and regulations promulgated hereunder shall be filed with said committee fourteen days prior to their effective date.

SECTION 5. Nothing in this act shall be construed to supersede the provisions of section sixty-one and sixty-two of chapter thirty, chapter ninety-one, and chapter one hundred thirty-nine A of the General Laws and chapter thirty-six of the acts of nineteen hundred and ninety-two or any regulations promulgated thereunder.

Nothing in this act shall apply to the portions of any river or adjacent land that are covered by a protective order pursuant to section seventeen B of chapter twenty-one.

SECTION 6. The provisions of this act shall not apply to any excavation, structure, road, clearing, driveway, landscaping, utility lines, rail lines, airports and marine cargo terminals owned by a political subdivision of the commonwealth and any bridge over two miles long, septic system, or parking lot within the riverfront area in existence on the date of enactment of this act nor shall the provisions of this act apply to the expansion of any structure, airports and marine cargo terminals owned by a political subdivision which expansion has commenced on or before November first, nineteen hundred and ninety-six, or for which any of the following conditions have been met: (i) a draft environmental impact report has been prepared and submitted pursuant to section sixty-two B of chapter thirty of the General Laws on or before

November first, nineteen hundred and ninety-six, (ii) a building permit conforming to local requirement has been filed for on or before October first, nineteen hundred and ninety-six and said permit is granted on or before April first, nineteen hundred and ninety-seven or (iii) a definitive plan has been approved or endorsed under section eighty-one U of chapter forty-one of the General Laws on or before August first, nineteen hundred and ninety-six. At the written request of the applicant and for just cause, the department of environmental protection may grant an extension from the time limit under clause (i) and upon written request of an applicant and for just cause, a local conservation commission may grant one extension of no more than sixty days from the time limit under clause (ii).

SECTION 7. The executive office of environmental affairs and the department of housing and community development shall study jointly the feasibility of establishing transferable development rights. Said study shall include, but not be limited to, the use of riverfront and other transferable rights to increase the intensity of use, density of clustering of units, amount of floor area, or percent of lot coverage, above that which would otherwise be permissible on land not within the riverfront area. Said study shall examine how such rights may be based on the impact of any restrictions on land use development which are the result of the application of this act. The executive office of environmental affairs and the department of housing and community development shall submit the report to the joint committee on natural resources and agriculture no later than one year following the adoption of regulations under this act.

SECTION 8. The commissioner of the department of fisheries,

wildlife and environmental law enforcement is hereby authorized to expend a sum not to exceed thirty million dollars for the acquisition of lands fronting on rivers and streams, including cold water streams; provided, that said commissioner shall give priority to linking segmented portions of land along rivers; provided, however, that not more than one million dollars shall be expended for the purchase, but not construction or maintenance costs, of fencing, posts or other materials for the purpose of mitigating non-point pollution in rivers as defined herein within existing farmland; provided further, that the department of environmental protection shall recommend locations for such mitigation measures to mitigate such non-point pollution to the department of food and agriculture which administers said funds, and provided further that any land acquired pursuant to this section shall be open to the public for hunting, fishing, and trapping unless otherwise specified to the contrary by the executive office of environmental affairs pursuant to section sixty of chapter fifteen of the acts of nineteen hundred and ninety-six. The amount hereby authorized is to be in addition to any funds previously authorized for this purpose, including, but not limited to, monies authorized pursuant to section twenty-nine of chapter five hundred and sixty-four of the acts of nineteen hundred and eighty-seven and chapter fifteen of the acts of nineteen hundred ninety-six.

SECTION 9. To meet the expenditures necessary in carrying out the provisions of section two of this act, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time, but not exceeding in the aggregate, the sum of thirty million dollars. All bonds issued by the commonwealth, as aforesaid, shall be designated on their face, River Lands Acquisition Loan, Act of 1996, and shall be issued for such maximum

term of years, not exceeding twenty years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth; provided, however, that all such bonds shall be payable not later than June thirtieth, two thousand and twenty-one. All interest and payments on account of principal and such obligation shall be payable from the General Fund. Bonds and interest thereon issued under the authority of this section, notwithstanding any other provisions of this act, shall be general obligations of the commonwealth.

SECTION 10. The state treasurer may borrow from time to time on the credit of the commonwealth such sums of money as may be necessary for the purposes of meeting payments as authorized by section two of this act, and may issue and renew from time to time notes of the commonwealth thereof, bearing interest payable at such time and at such rate as shall be fixed by the state treasurer. Such notes shall be issued and may be renewed one or more times for such terms, not exceeding one year, as the governor may recommend to the general court in accordance with Section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth, but the final maturities of such notes, whether original or renewal, shall not be later than June thirtieth, two thousand and one. Notes and the interest thereon issued under the authority of this act, notwithstanding any other provisions of this act, shall be general obligations of the commonwealth.

SECTION 11. There is hereby established a riverfront advisory committee for the purpose of participating in the review of the rules and regulations promulgated pursuant to the provisions of section four of this act. Said advisory committee shall consist of

eight members appointed by the commissioner of the department of environmental protection, four of whom shall represent environmental organizations, one of which shall represent the real estate community, one of which shall be a developer, one of which shall be represent the agriculture community, and one of which shall represent the aquaculture community. At least two of the members, one from an environmental organization and one other appointee from other than an environmental organization, shall own or have an interest in land located in a riverfront area as defined by this act. Meetings of the advisory committee shall be at the discretion of said commissioner; provided, however, that the committee shall meet at least four times in the first twelve months after the effective date of this act, and at least once annually thereafter. Said commissioner may dissolve the advisory committee following the adoption of regulations for chapter one hundred and thirty-one B of the General Laws or at any time thereafter.

SECTION 12. The executive office of environmental affairs is hereby authorized and directed to develop a twenty-five year plan to protect the natural integrity of the rivers of the commonwealth, and to acquire open space lands fronting rivers and streams; provided, further, that said plan shall be submitted to the joint committee on natural resources and agriculture and the house and senate committees on ways and means no later than January thirty-first nineteen hundred and ninety-seven.

SECTION 13. An amount no less than one hundred thousand dollars per year for a period up to five years shall be expended from funds controlled by the trust fund, established by section seven of chapter two hundred and thirty-six of the acts of nineteen hundred and eighty-eight for the use by the department of environmental protection for technical assistance and training for

conservation commission for the purposes of this act; provided, further, that the department of environmental protection shall receive support in the development and provisions of such technical assistance and training from the Massachusetts Soil and Water Conservation Districts, Coastal Zone Management, the Department of Fisheries, Wildlife and Environmental Law Enforcement, the Department of Food and Agriculture, and the Department of Environmental Management.

SECTION 14. Notwithstanding any general or special law or rule or regulation to the contrary, any construction, expansion, repair, restoration, alteration, replacement, operation and maintenance of public or private local or regional wastewater treatment plants and their related structures, conveyance systems, and facilities, including utility lines shall be exempt from the provisions of this act.

SECTION 15. Section 8C of chapter 40 of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by inserting before the penultimate sentence the following sentence: -

Prior to the adoption of any rule or regulation which seeks to further regulate matters established by section forty of chapter one hundred and thirty-one or regulations authorized thereunder relative to agricultural or aquacultural practice, the commission shall, no later than seven days prior to the commission's public hearing on the adoption of said rules and regulations, give notice of the said proposed rules and regulations to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one.

SECTION 16. Section 5 of chapter 40A of the General Laws, as

so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

Prior to the adoption of any zoning ordinance or by-law or amendment thereto which seeks to further regulate matters established by section forty of chapter one hundred and thirty-one or regulations authorized thereunder relative to agricultural and aquacultural practices, the city or town clerk shall, no later than seven days prior to the city council's or town meeting's public hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give notice of the said proposed zoning ordinances or by-laws to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one.

SECTION 17. Section 40 of chapter 131 of the General Laws, as so appearing, is hereby amended by inserting after the "bank", in line 1, the following words: - , riverfront area.

SECTION 18. Said section 40 of said chapter 131, as so appearing, is hereby further amended by inserting after the eleventh paragraph the following five paragraphs:-

The term "Densely developed areas", as used in this section shall mean, any area of ten acres or more that is being utilized, or includes existing vacant structures or vacant lots formerly utilized as of January first, nineteen hundred and forty-four or sooner for, intensive industrial, commercial, institutional, or residential activities or combinations of such activities, including, but not limited to the following: manufacturing, fabricating, wholesaling, warehousing, or other commercial or industrial activities; retail trade and service activities; medical and educational institutions; residential dwelling structures at a

density of three or more per two acres; and mixed or combined patterns of the above. Designation of a densely developed area is subject to the secretary of the executive office of environmental affair's approval of a city or town's request for such designation. Land which is zoned for intensive use but is not being utilized for such use as of January first, nineteen hundred and ninety-seven or which has been subdivided no later than May first, nineteen hundred and ninety-six shall not be considered a densely developed area for the purposes of this chapter.

The term "Mean annual high-water line", as used in this section, shall mean with respect to a river, the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water and which distinguishes between predominantly aquatic and predominantly terrestrial land. The mean high tide line shall serve as the mean annual high water line for tidal rivers.

The term "River", as used in this section, shall mean a natural flowing body of water that empties to any ocean, lake, or other river and which flows throughout the year.

The term "Riverfront area", as used in this section, shall mean that area of land situated between a river's mean annual high-water line and a parallel line located two hundred feet away, measured outward horizontally from the river's mean annual high-water line. This definition shall not create a buffer zone, so-called, beyond such riverfront area. Riverfront areas within municipalities with (i) a population of ninety thousand or more persons or (ii) a population density greater than nine thousand persons per square mile, as determined by the nineteen hundred and

ninety federal census; (iii) that are within densely developed areas as defined herein; (iv) land in Waltham between the Charles river on the north, and the Crescent street and Pine street on the south, and the intersection of the Charles river and a line extended from the center line of Walnut street on the west, and the railroad right-of-way now or formerly of the Boston and Maine Railroad on the east; or (v) property located in the town of Milton shown on Milton assessors Map G, Block 56, Lot 13, located on 2 Granite Avenue shall be defined as that area of land situated between a river's mean annual high-water line and a parallel line located twenty-five feet away, measured outward horizontally, from the river's mean annual high-water line. The riverfront area shall not include land now or formerly associated with historic mill complexes including, but not limited to, the mill complexes in the Cities of Holyoke, Taunton, Fitchburg, Haverhill, Methuen and Medford in existence prior to nineteen hundred and forty-six and situated landward of the waterside facade of a retaining wall, building, sluiceway, or other structure existing on the effective date of this act. The riverfront area shall not apply to any mosquito control work done under the provisions of clause (36) of section five of chapter forty, of Chapter two hundred and fifty-two or of any special act or to forest harvesting conducted in accordance with a cutting plan approved by the department of environmental management, under the provisions of sections forty to forty-six, inclusive, of chapter one hundred and thirty-two; and shall not include any area beyond one hundred feet of river's mean annual high water mark; in which maintenance of drainage and flooding systems of cranberry bogs occurs; in which agricultural land use or aquacultural use occur; to construction, expansion, repair, maintenance or other work on piers, docks, wharves, boat houses, coastal engineering structures, landings, and all other structures and activities subject to licensing or permitting under

chapter ninety-one and its regulations; provided that such structures and activities shall remain subject to statutory and regulatory requirements under chapter ninety-one and section forty of chapter one hundred and thirty-one or is the site of any project authorized by special act prior to January first, nineteen hundred and seventy-three.

The term "Riverfront area boundary line", as used in this section, shall mean the line located at the outside edge of the riverfront area.

SECTION 19. Said section 40 of said chapter 131, as so appearing, is hereby further amended by inserting after the word "fisheries", in lines 163 and 191, in each instance, the following words:- or to the protection of the riverfront area consistent with the following purposes: to protect the private or public water supply; to protect the ground water; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries.

SECTION 20. The fourteenth paragraph of said section 40 of said chapter 131, as so appearing, is hereby amended by inserting after the sixth sentence the following four sentences:- In the case of riverfront areas, no order issued by a conservation commission, board of selectmen, mayor, or the department shall permit any work unless the applicant, in addition to meeting the otherwise applicable requirements of this section, has proved by a preponderance of the evidence that (1) such work, including proposed mitigation measures, will have no significant adverse impact on the riverfront area for the following purposes: to

protect the private or public water supply; to protect the ground water; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries, and (2) there is no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on such purposes.

An alternative is practicable and substantially economically equivalent if it is available and capable of being done after taking into consideration: costs, and whether such costs are reasonable or prohibitive to the owner; existing technology; the proposed use; and logistics in light of overall project purposes.

For activities associated with access for one dwelling unit, the area under consideration for practicable alternatives will be limited to the lot; provided, that said lot shall be on file with the registry of deeds as of the August first, nineteen hundred and ninety-six. For other activities including, but not limited to, the creation of a real estate subdivision, the area under consideration shall be the subdivided lots, any parcel out of which the lots were created, and any other parcels that are adjacent to such parcel or adjacent through other parcels formerly or presently owned by the same owner at any time on or after August first, nineteen hundred and ninety-six or any land which can reasonably be obtained; provided, that an ownership interest can reasonably be obtained after taking into consideration: cost, and whether such cost is reasonable or prohibitive to the owner; existing technology; the proposed use; and logistics in light of overall project purposes.