



Legislative Affairs

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Testimony on:

An Act Protecting the Natural and Historic Resources of the Commonwealth (SB 350), Senator James B. Eldridge
An Act Protecting the Natural and Historic Resources of the Commonwealth (HB 1124), Representative Ruth B. Balser

Before the Joint Committee on Environment, Natural Resources & Agriculture
March 22, 2011

Mass Audubon strongly supports **SB 350** and **HB 1124**, *An Act Protecting the Natural and Historic Resources of the Commonwealth*. We urge the Joint Committee on Environment, Natural Resources & Agriculture to issue a prompt and favorable report of the bill.

In 1972, Massachusetts voters approved an amendment to the state Constitution, Article 97, granting people the right to a clean environment. 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. By way of acts of the legislature as well as through generous gifts of many citizens, the Commonwealth and its municipalities have protected nearly one million acres of parklands, watershed lands, farmlands, and wildlife habitats. 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.

In the absence of clear standards with the force of law, Article 97 votes have become routine legislative business, with nearly every land transfer proposal brought up for a vote approved unanimously. Most legislators feel compelled to vote in the affirmative out of reciprocity—they will need their colleagues’ support for their own district’s land transfer petition in the future. 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.

Governor Patrick has acted to curtail the diversion of publicly protected lands through a more stringent review of Article 97 bills once they reach his desk. While his veto threat is a welcome short-term deterrent, it does not remove the need for a clear and consistent disposition process that honors the integrity of Article 97 of the Amendments to the Massachusetts Constitution.

This legislation, also known as the **PUBLIC LANDS PROTECTION ACT (PLPA)**, 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.

Legislation to allow a disposition or change of use of Article 97 lands will not be considered unless the owner of the lands or easements provides the General Court with the following 6 items:

- A statement from the Secretary of Energy and Environmental Affairs as to whether the land or easement is classified as Article 97 land.
- A metes and bounds description of the lands or easements, a copy of the deed into the present owners and a statement of the market value of the lands or easements through an appraisal and prepared by a state certified appraiser or state licensed appraiser.

- Approvals by the governing body or officer of the owner approving disposition or change in use of the subject land and acquisition of replacement land, preceded, if applicable, by the approval of the conservation commission.
- An alternatives analysis approved by the Secretary of Energy and Environmental Affairs.
- A signed offer, signed purchase and sale agreement, fully executed lease, deed or other legal documents for the replacement land, a metes and bounds description of the replacement land and a statement of the market value of the lands through an appraisal and prepared by a state certified appraiser or state licensed appraiser and a letter from the Secretary of Energy and Environmental Affairs approving the replacement land.

The Secretary of Energy and Environmental Affairs will help set up guidelines for conducting an alternatives analysis and identifying replacement land. Additionally, at the end of each legislative session, the joint committee on bonding, capital expenditures and state assets is to file a report detailing their activities on all bills referred to them that involve dispositions or changes in use of lands or easements taken or acquired for natural resources purposes.

Over the past decade, the Commonwealth has spent over a billion dollars to acquire open space. 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. 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.

The Supreme Court of the United States considered the issue of converting parkland to highways in a landmark ruling thirty years ago. In *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971), the nation's highest court ruled that the Secretary of Transportation (former Massachusetts Governor John Volpe, at that time) may not authorize highway construction on public parkland unless "no feasible and prudent alternative" exists. Chief Justice Thurgood Marshall stated for the Court:

"The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitudes. If the statutes are to have any meaning, the Secretary cannot approve the destruction of parkland unless he finds that alternative routes present unique problems."

Article 97 of the Amendments of the Constitution should serve to establish an interconnected system of natural areas and open spaces that are protected and managed for the ecological benefits they provide people and the environment. While traditional capital projects have fixed lives and depreciate over time, capital dollars spent on land conservation appreciate and pay economic dividends in perpetuity. Protected land is a form of 'green infrastructure', providing ecological services, such as water purification and flood control, to the taxpayers. Protected land helps channel growth away from sensitive areas toward more appropriate sites that can better accommodate development.

Watershed lands filter contaminants, reducing the need for expensive treatment plants. Urban parks provide solace from the congestion of cities. Agricultural lands produce fresh local food. Wildlife habitats preserve biological diversity. Outdoor recreation, tourism, agriculture, and forestry generate tax revenue and jobs in Massachusetts. Quality of life consistently ranks near the top of relocation criteria considered by high-tech, research & development labs and other emerging technology facilities that place great emphasis on attracting and retaining skilled labor. Protected lands should be the last alternative to public or private development, not the first option.

Thank you for the opportunity to provide these comments.

- Jennifer Ryan, Legislative Director

Mass Audubon works to protect the nature of Massachusetts for people and wildlife. Together with more than 100,000 members, we care for 34,000 acres of conservation land, provide educational programs for 225,000 children and adults annually, and advocate for sound environmental policies at local, state, and federal levels. Mass Audubon's mission and actions have expanded since our beginning in 1896 when our founders set out to stop the slaughter of birds for use on women's fashions. Today we are the largest conservation organization in New England. Our statewide network of wildlife sanctuaries, in 90 Massachusetts communities, welcomes visitors of all ages and serves as the base for our work. To support these important efforts, call 800-AUDUBON (283-8266) or visit www.massaudubon.org.