HOUSE DOCKET, NO. 2556 FILED ON: 1/17/2013

HOUSE . . . . . No. 3071

The Commonwealth of Massachusetts

PRESENTED BY:

Kate Hogan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to aviation preservation restrictions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Kate Hogan	*3rd Middlesex*
Stephen L. DiNatale	*3rd Worcester*
Donald F. Humason, Jr.	*4th Hampden*
Carolyn C. Dykema	*8th Middlesex*

HOUSE DOCKET, NO. 2556 FILED ON: 1/17/2013

HOUSE . . . . . No. 3071

By Ms. Hogan of Stow, a petition (accompanied by bill, House, No. 3071) of Kate Hogan and others for legislation to establish an aviation lands preservation committee within the Aeronautics Division of the Department of Transportation. Transportation.

The Commonwealth of Massachusetts

An Act relative to aviation preservation restrictions.

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. Section 60 of chapter 6C of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following sentence:-

The division shall establish a program to assist the commonwealth in the acquisition of aviation preservation restrictions.

SECTION 2. Said chapter 6C of the General Laws, as so appearing, is hereby amended by inserting after section 61 the following section:-

Section 61A. There shall be within the aeronautics division an aviation lands preservation committee which shall consist of the administrator or his/her designee, the chief aeronautics counsel, and a representative of the aviation industry to evaluate and accept or reject proposed aviation land preservation projects submitted by municipalities or by a charitable corporation or trusts whose purposes include preservation of buildings or sites of historical significance or of a particular such building or site. The criteria for such projects shall include the following: (1) whether the airport is sustainable; (2) the fair market value of the land as determined by independent appraisals; and (3) the degree to which the proposed acquisition would serve to promote aviation throughout the commonwealth.

SECTION 3. Section 31 of chapter 184 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following paragraph:-

An aviation preservation restriction means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land appropriate to retaining land or buildings for aviation use, to forbid or limit any or all construction or placing of buildings except for those used for aviation purposes; and other acts or uses detrimental to such retention of the land for aviation use. Such

23 aviation preservation restrictions shall be in perpetuity except as released under the provisions of
24 section 32. All other customary rights and privileges of ownership shall be retained by the
25 owner including the right of privacy and the right to carry out all regular aviation practices.

26 SECTION 4. Chapter 184 of the general laws is hereby amended by striking out section
27 32 and inserting in place thereof the following section:-

28 Section 32. No conservation restriction, agricultural preservation, watershed preservation
29 restriction as defined in section 31, held by any governmental body or by a charitable corporation
30 or trust whose purposes include conservation of land or water areas or of a particular such area,
31 no preservation restriction, as defined in said section 31, held by any governmental body or by a
32 charitable corporation or trust whose purposes include preservation of buildings or sites of
33 historical significance or of a particular such building or site, no affordable housing restriction
34 as defined in said section 31, held by any governmental body or by a charitable corporation or
35 trust whose purposes include creating or retaining or assisting in the creation or retention of
36 affordable rental or other housing for occupancy by persons or families of low or moderate
37 income and no aviation preservation restriction as defined in section 31 held by any
38 governmental body or by a charitable corporation or trust whose purposes include aviation or the
39 promotion thereof, shall be unenforceable on account of lack of privity of estate or contract or
40 lack of benefit to particular land or on account of the benefit being assignable or being assigned
41 to any other governmental body or to any charitable corporation or trust with like purposes, or on
42 account of the governmental body the charitable corporation or trust having received the right to
43 enforce the restriction by assignment, provided; (a) in case of a restriction held by a city or town
44 or a commission, authority or other instrumentality thereof it is approved by the secretary of
45 energy and environmental affairs if a conservation restriction, the commissioner of the
46 metropolitan district commission if a watershed preservation restriction, the commissioner of
47 food and agriculture if an agricultural preservation restriction, the Massachusetts historical
48 commission if a preservation restriction, the director of housing and community development if
49 an affordable housing restriction, or the administrator of the aeronautics division of the
50 Massachusetts department of transportation if an aviation preservation restriction; and (b) in case
51 of a restriction held by a charitable corporation or trust it is approved by the mayor, or in cities
52 having a city manager the city manager, and the city council of the city, or selectmen or town
53 meeting of the town, in which the land is situated, and the secretary of energy and environmental
54 affairs if a conservation restriction, the commissioner of the metropolitan district commission if a
55 watershed preservation restriction, the commissioner of food and agriculture if an agricultural
56 preservation restriction, the Massachusetts historical commission if a preservation restriction, the
57 director of housing and community development if an affordable housing restriction, or the
58 administrator of the aeronautics division of the Massachusetts department of transportation if an
59 aviation preservation restriction.

60 Such conservation restriction, agricultural preservation, aviation preservation, watershed
61 preservation and affordable housing restrictions are interests in land and may be acquired by any

62 governmental body or such charitable corporation or trust which has power to acquire interest in
63 the land, in the same manner as it may acquire other interests in land. The restriction may be
64 enforced by injunction or other proceeding, and shall entitle representatives of the holder to enter
65 the land in a reasonable manner and at reasonable times to assure compliance. If the court in any
66 judicial enforcement proceeding, or the decision maker in any arbitration or other alternative
67 dispute resolution enforcement proceeding, finds there has been a violation of the restriction or
68 of any other restriction described in clause (c) of section 26 then, in addition to any other relief
69 ordered, the petitioner bringing the action or proceeding may be awarded reasonable attorneys'
70 fees and costs incurred in the action proceeding. The restriction may be released, in whole or in
71 part, by the holder for consideration, if any, as the holder may determine, in the same manner as
72 the holder may dispose of land or other interests in land, but only after a public hearing upon
73 reasonable public notice, by the governmental body holding the restriction or if held by a
74 charitable corporation or trust, by the mayor, or in cities having a city manager the city manager,
75 the city council of the city or the selectmen of the town, whose approval shall be required, and in
76 case of a restriction requiring approval by the secretary of energy and environmental affairs, the
77 aeronautics administrator, the Massachusetts historical commission, the director of the division
78 of water supply protection of the department of conservation and recreation, the commissioner of
79 food and agriculture, or the director of housing and community development, only with like
80 approval of the release.

81 No restriction that has been purchased with state funds or which has been granted in
82 consideration of a loan or grant made with state funds shall be released unless it is repurchased
83 by the land owner at its then current fair market value. Funds so received shall revert to the fund
84 sources from which the original purchase, loan, or grant was made, or, lacking such source, shall
85 be made available to acquire similar interests in other land. Agricultural preservation restrictions
86 shall be released by the holder only if the land is no longer deemed suitable for agricultural or
87 horticultural purposes or unless two-thirds of both branches of the general court, by a vote taken
88 by yeas and nays, vote that the restrictions shall be released for the public good. Watershed
89 preservation restrictions shall be released by the holder only if the land is deemed by the
90 commissioner of the metropolitan district commission and the secretary of energy and
91 environmental affairs to no longer be of any importance to the water supply or potential water
92 supply of the commonwealth or unless two-thirds of both branches of the general court, by a vote
93 taken by yeas and nays, vote that the restrictions shall be released for the public good.

94 Approvals of restrictions and releases shall be evidenced by certificates of the secretary
95 of energy environmental affairs or the chairman, the aeronautics administrator, clerk or secretary
96 of the Massachusetts historical commission, or the commissioner of food and agriculture, or the
97 director of housing and community development or the city council, or selectmen of the town, as
98 applicable duly recorded or registered.

99 In determining whether the restriction or its continuance is in the public interest, the
100 governmental body acquiring, releasing or approving shall take into consideration the public

interest in such aviation, conservation, preservation, watershed preservation, agricultural preservation or affordable housing and any national, state, regional and local program in furtherance thereof, and also any public state, regional or local comprehensive land use or development plan affecting the land, and any known proposal by a governmental body for use of the land.

This section shall not be construed to imply that any restriction, easement, covenant or condition which does not have the benefit of this section shall, on account of any provisions hereof, be unenforceable. Nothing in this section or section 31 and section 33 shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise to use land for public purposes.

Nothing in this section shall prohibit the department of public utilities or the department of telecommunications and cable from authorizing the taking of easements for the purpose of utility services provided that: (a) said department shall require the minimum practicable interference with state and federal air space requirements or farming operations with respect to width of easement, pole locations and other pertinent matters; (b) the applicant has received all necessary licenses, permits, approvals and other authorizations from the appropriate state agencies; and (c) the applicant shall compensate the owner of the property in the same manner and the same fair market value as if the land were not under restriction.