

## **AN ACT AUTHORIZING THE LEASING OF CERTAIN REAL PROPERTY KNOWN AS OUTER BREWSTER ISLAND.**

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is forthwith to provide for the leasing of certain property of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience; and

*Whereas*, The availability of energy sources for the heating and cooling of homes and businesses and for generating electricity is critical to the health, safety and economic well being of the residents of the commonwealth; and

*Whereas*, The supply of energy sources has been lacking in recent years to the point, at times, where the residents of the commonwealth have been without heat and electricity for short periods of time during the winter months; and

*Whereas*, The demand for natural gas to be used for the generation of electricity has increased in recent years and is expected to continue to increase, thereby increasing the stress on the availability of this energy resource, as well as forcing price increases; and

*Whereas*, Mainland liquefied natural gas import facilities and mainland liquefied natural gas storage facilities located in urban areas represent significant safety and security risks; and

*Whereas*, Offshore liquefied natural gas import facilities do not provide for the storage of liquefied natural gas, may adversely affect the commercial fishing industry to a serious degree and may be required to allow liquefied natural gas tankers to wait for available pipeline capacity to offload and thereby increase safety and security concerns; and

*Whereas*, Outer Brewster Island in Boston Harbor, as a remote outer harbor island which is littered with abandoned structures and which is in proximity to the natural gas distribution system, represents an opportunity to

locate a liquefied natural gas import facility and a liquefied natural gas storage facility with greater safety and security than that which is possible at an urban mainland site, or an offshore site, including both accidental and intentional spills; and

*Whereas*, Through the use of proper design and construction methods it is possible to construct liquefied natural gas facilities and storage facilities in an environmentally sensitive and safe manner; and

*Whereas*, Liquefied natural gas is a critical component in meeting the expanding energy needs of the commonwealth;

*Now Therefore*, The general court hereby finds that the leasing of real property of the commonwealth for the construction and operation of a liquefied natural gas import facility is in the best interest of the public and needs to proceed forthwith.

*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.** As used in this act, the following words shall have the following meanings:

"Commissioner", the commissioner of the division of capital asset management and maintenance.

"Property", Outer Brewster Island in Boston Harbor, and certain waters, seabed, tidelands and submerged lands surrounding said island, as more specifically described in section 2.

"Proposer", a private entity which qualifies to respond to the request for proposals to be issued pursuant to this act.

**SECTION 2.** Notwithstanding the provisions of sections 40E to 40L, inclusive, of chapter 7 of the General Laws or any other general or special law or rule or regulation to the contrary, the commissioner of capital asset management and maintenance is hereby authorized and directed to lease for a term of 99 years, in accordance with the provisions of this act, the real property known as Outer Brewster Island located in Boston Harbor, containing twenty-two acres, more or less, and currently used as parkland, and such area of the waters, seabed, tidelands and submerged lands

measured seaward from the mean low water mark of said island in all directions as the commissioner may determine to be necessary for the construction, operation and maintenance of the facilities authorized by this act. The lease shall only allow for the construction, operation and maintenance of a liquefied natural gas import facility, including without limitation piers, wharves and other marine facilities, a liquefied natural gas storage and regasification facility and facilities for necessary ancillary activities; said lease shall require that any portion of the property not utilized for the aforementioned purposes shall be maintained in its natural state.

The commissioner shall, within 60 days of the effective date of this act, develop and publicly advertise a request for proposals to lease out the property for the purposes set forth in this section in accordance with the requirements for proposers and the selection criteria set forth in section 3.

**SECTION 3.** The selection process for determining the lessee of the property shall be an open and fair competitive process, including at least two advertisements in newspapers of general circulation in the Boston area. The commissioner shall limit the submission of proposals to proposers who meet the following requirements: (i) for the purpose of encouraging competition in the industry, the proposer, or any legally related entity, subsidiary, affiliate, partner or joint-venturer, may not own or operate a liquefied natural gas import facility which provides natural gas to customers in the commonwealth, or be actively pursuing the development of a liquefied natural gas import facility which would provide natural gas to customers in the commonwealth; (ii) the proposer, or a legally related entity, subsidiary, affiliate, partner or joint-venturer must own and operate one or more liquefied natural gas import facilities; (iii) the ultimate corporate parent of the proposer must be incorporated within the United States; (iv) the proposer must demonstrate the financial capacity to construct, operate and maintain a liquefied natural gas import facility on Outer Brewster Island; and (v) the proposer must agree to accept financial responsibility for complying with the terms of any court consent decree or administrative order relative to the property. Each proposal must include a certificate from an authorized officer of the proposer certifying that the proposer has satisfied each of the foregoing requirements. Submitted proposals shall be evaluated on the basis of the following criteria: experience in the development, operation and maintenance of liquefied natural gas import facilities; construction schedule from the time permits are granted; financial ability to construct, operate and maintain the facility; the level of proposed

annual lease payments and such other reasonable criteria as the commissioner, in consultation with the secretary of environmental affairs, shall determine to be necessary.

Within 30 days of the submission of proposals, the commissioner shall select a proposer with whom to enter into a lease of the property. The commissioner shall enter into a lease of the property with the selected proposer as expeditiously as possible in the light the emergency nature of this act and said lease shall include the terms and conditions under which leased interests in the property shall revert to the commonwealth in the event that the property is not used for the purposes of this act within a reasonable time or such use is discontinued.

**SECTION 4.** The lease authorized by this act shall include a condition subsequent that the selected proposer shall comply fully with the applicable provisions of sections 61 through 62H, inclusive, of chapter 30 of the General Laws prior to the commencement of any construction on the property. The commissioner shall not be required to comply with said sections 61 through 62H and may enter into the lease authorized by this act upon the selection of a proposer; provided, that said lease shall include a condition subsequent that if the selected proposer fails to notify the secretary of environmental affairs of the nature of the project and the proposer's intent to apply for permits, in accordance the provisions of section 62A of said chapter 30, within 60 days of the signing of said lease said lease shall automatically terminate.

**SECTION 5.** The property shall be disposed of in its existing condition without warranty by the commonwealth. The lessee of the property shall assume the costs in full of any appraisals, surveys, title examinations, site assessments, recording fees and other expenses deemed necessary by the commissioner to effectuate the disposition of the property as authorized by this act. The lease payments required by this act shall be the sole state charge or fee for the use and occupancy of the property. During the term of the lease, the property shall continue to be considered as state property for zoning purposes.

The construction and occupancy of buildings or other things erected on the property and all other construction on the property shall be made in accordance solely with the state building code authorized by chapter 143 of the General Laws as if such improvements were state-owned property.

**SECTION 6.** In the event that the request for proposals required by this act is not issued within the time required by this act or the selection of a proposer is not accomplished within in the time required by this act, or both, the commissioner shall file a written report with the house and senate committees on ways and means stating the specific reasons why a required action was not completed and outlining an administrative corrective action plan to undertake and complete the required action. Said report, or reports, shall be so filed within 5 days of the date that the required action should have been completed.

**SECTION 7.** The general court hereby finds and declares that the property consists in part of flats and submerged lands in which the public and the commonwealth have certain rights, including, but not limited to, in the case of the commonwealth, fishing, fowling and navigation and that the property is used as parkland. The general court further finds and declares that the use of the property as authorized by this act will aid in meeting the energy needs of the citizens of the commonwealth and constitutes a proper public purpose, which must be accomplished in a safe and secure manner, and that the construction and operation of the facilities authorized by this act will not be detrimental to the aforementioned public rights, including navigation, and will have a de minimus affect on the remaining lands and waters of Boston Harbor. The rights of the public and the commonwealth in the property are hereby relinquished while the lease authorized by the act is in effect.

**SECTION 8.** Chapter 29 of the General Laws is hereby amended by inserting after section 2L, the following section: Section 2L1/2. Notwithstanding the provisions of any other general or special law or administrative bulletin to the contrary, there is hereby established and set up on the books of the Commonwealth a separate fund, to be known as the Boston Harbor, Boston Harbor Islands and State Parks Trust Fund, which shall be used for the purposes of the projects authorized herein and for advancing the ecological, recreational, educational and conservation interests of Boston Harbor, the Boston Harbor Islands and state parks. Projects located within and connecting to Boston Harbor, the city of Boston, coastal communities abutting the city of Boston, in the Boston Harbor Islands National Recreation Area, as defined in Public Law 104-33, and within state parks that advance the purposes of the trust will be eligible for funding, including, but not limited to, construction of and improvements to recreational facilities, infrastructure improvements, pier and bridge

improvements, water quality and habitat restoration, harborwalk and greenway improvements, and increased transportation access and pedestrian connections.

The trust shall receive, hold and expend all fees generated by permits, licenses, leases and all other agreements relating to the use of Outer Brewster Island in Boston Harbor.

The state treasurer shall deposit the fund in such a manner as will secure the highest interest rate available consistent with the safety of the fund and with the requirement that all amounts on deposit be available for withdrawal without penalty for such withdrawal at any time. The trust may receive such other funds as may be appropriated from time to time; as well as gifts and grants from other public and private sources to be used for the purposes of the trust. All interest accrued and earnings shall be deposited into the trust. The trust shall be expended solely for the purposes of the projects authorized herein and for advancing ecological, recreational, educational, and conservation interests of Boston Harbor, the Boston Harbor Islands and state parks. Any unexpended balances shall be redeposited for future use consistent with the purpose of the trust. The secretary of environmental affairs shall be charged with administering the trust, with the advice and counsel of a board of trustees. Said board of trustees shall consist of seven members, three of whom shall be appointed by the governor, three of whom shall be appointed by the mayor of the city of Boston and one of whom shall be appointed by The Boston Harbor Association. Each of the trustees shall serve for a term of five years; provided, that the initial terms of two of the trustees appointed by the governor, and one of the trustees appointed by the mayor of the city of Boston shall be for three years. Upon the expiration of the term of office of any member his successor shall be appointed in like manner for a term of 5 years. In the event of a vacancy in the office of a member, his successor shall be appointed in like manner to serve for the unexpired term.

The board of trustees shall serve without compensation, and shall adopt operating rules and procedures for its organization and activities. Not less than fifty percent of the trust shall be expended for projects that are within the Boston Harbor Islands National Recreation Area, as defined in Public Law 104-33. Projects that further advance the purposes of the fund shall also be eligible for funding. The board of trustees shall also develop criteria for project grants to be made to public agencies and not-for-profit organizations for projects consistent with the purposes of the trust. At least annually, the board of trustees shall recommend projects for approval by the secretary of environmental affairs.

All expenditures of the trust must be made for projects recommended by the board of trustees. The board of trustees, with the approval of the secretary of environmental affairs, may employ a staff to assist the board of trustees in carrying out its duties under this section. The secretary of environmental affairs shall not approve expenditures which will cause the fund to become deficient.

**SECTION 9.** The provisions of this act shall be effective notwithstanding the provisions of any other general or special law to the contrary, except for a law expressly citing and superseding the effectiveness of this act.

**SECTION 10.** If any provision of this act or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this act, and to this end the provisions of the chapter are hereby declared to be severable.

**SECTION 11.** This act shall take effect upon its passage.

## Bill Summary

### An Act Authorizing The Leasing Of Certain Real Property Known As Outer Brewster Island

This bill would enact legislation to authorize and direct the Commissioner of the Division of Capital Asset Management and Maintenance(DCAM) to lease Outer Brewster Island in Boston Harbor for the purpose of siting a liquefied natural gas (LNG) facility on the island.

This facility would combine the advantages of a mainland facility and the enhanced safety features of an off shore facility. Large amounts of LNG could be safely stored at this facility and pose no threat to residents. The closest residence is beyond the federally mandated safety zone.

The bill is one step in meeting the expanding energy needs of the citizens of the commonwealth in a safe and environmentally responsible manner.

LNG is a critical component in the energy supply of the Commonwealth. Each year more homes and businesses add to the demand for natural gas and each year more electricity is generated by plants using natural gas. It is crucial to begin the process to increase the supply of LNG now to meet the needs of the future.

#### Section by section summary:

**Recitals:** The first recital declares the proposed act to be an emergency law. The remaining recitals describe the need for more energy and why an island facility is superior to mainland or floating facilities.

**Section 1. Definitions.** Defines three terms.

**Commissioner:** The Commissioner of DCAM.

**Property:** Outer Brewster Island and certain areas surrounding it.

**Proposer:** Private entities which propose leases in accordance with the act.

**Section 2.** This section authorizes and directs DCAM to lease the property for limited purposes. DCAM is required to issue an RFP.

**Section 3.** The selection process is required to be open, fair and competitive. Selection criteria is set out.

**Section 4.** The authorized lease must contain two conditions subsequent . As a condition of the lease, the selected proposer must agree to fully comply with all applicable provisions of the MEPA law and as a second condition must agree to begin the MEPA process within 60 days of the signing of the lease or the lease automatically terminates.

**Section 5.** The lessee must pay all of the costs of the transaction. The lease payments constitute the complete state compensation for the use of the property. All construction activity on the property shall be subject to the jurisdiction of the State Building Inspector. The property shall continue to be state property for zoning purposes.

**Section 6.** Requires certain reports if time limits are not met.

**Section 7.** Required finding and other wording to meet constitutional standards.

**Section 8.** Creates a trust fund on the books of the Commonwealth to receive the lease payments and any other available revenue to be used for the purposes of the trust. The trust may be used to benefit Boston Harbor, the Boston Harbor Islands; and state parks. The trust is under the general supervision of the Secretary of Environmental Affairs, but projects must be recommended by a seven member Board of Trustees to be eligible for funding. Three trustees are to be appointed by the Governor, three by the Mayor of the city of Boston and one by The Boston Harbor Association.

**Section 9.** Notwithstanding clause.

**Section 10.** Severability clause.

**Section 11.** Effective date.