

SENATE No. 396

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 bill:

An Act protecting the natural resources of the Commonwealth

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	Middlesex and Worcester
Ruth B. Balser	12th Middlesex
Frank I. Smizik	15th Norfolk
Robert A. O'Leary	Cape and Islands
Benjamin B. Downing	Berkshire, Hampshire and Franklin
Susan C. Fargo	Third Middlesex
Bruce E. Tarr	First Essex and Middlesex
Stanley C. Rosenberg	Hampshire and Franklin
Paul Kujawski	8th Worcester
Stephen Kulik	1st Franklin
Ellen Story	3rd Hampshire
Peter v. Kocot	1st Hampshire
Robert P. Spellane	13th Worcester
Barbara A. L'Italien	18th Essex
Michael F. Rush	10th Suffolk
Stephen L. DiNatale	3rd Worcester
Steven J. D'Amico	4th Bristol
Denise Provost	27th Middlesex
Paul J. Donato	35th Middlesex

Alice K. Wolf	25th Middlesex
Katherine Clark	32nd Middlesex
Matthew C. Patrick	3rd Barnstable
Louis L. Kafka	8th Norfolk
Richard J. Ross	9th Norfolk
Cheryl A. Coakley-Rivera	10th Hampden
Jennifer M. Callahan	18th Worcester
Thomas M. Stanley	9th Middlesex
Christine E. Canavan	10th Plymouth
Gloria L. Fox	7th Suffolk
Jonathan Hecht	29th Middlesex
Cynthia Stone Creem	First Middlesex and Norfolk
Cory Atkins	14th Middlesex
Kay Khan	11th Middlesex
William Lantigua	16th Essex
Katherine Clark	32nd Middlesex
Jay R. Kaufman	15th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00542 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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AN ACT PROTECTING THE NATURAL RESOURCES OF THE COMMONWEALTH.

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

1 **SECTION 1.** The General Laws are hereby amended by inserting after chapter 132B the
2 following chapter:-

CHAPTER 132C.

PUBLIC LANDS PRESERVATION ACT.

5 Section 1. It is hereby declared to be the policy of the commonwealth that lands or
6 easements taken or acquired for natural resource purposes, consistent with Article 97, are a vital
7 and indispensable public natural resource and, therefore, that there shall be no net loss of public
8 lands or easements taken or acquired for natural resource purposes as a result of disposition or
9 change in use of these lands.

10 Section 2. Definitions. As used in this chapter, the following words shall have the
11 following meanings: -

12 “Alternatives analysis”, a description of alternatives to a proposed disposition or change in use of

13 lands or easements protected under Article 97, including, but not limited to an analysis of the
14 most reasonable alternative (other than taking no action) that does not require a disposition or
15 change in use under Article 97; the description of an alternative shall include analysis of cost,
16 impact on current use and environmental impact.

17 “Article 97”, Article XLIX, as appearing in Article XCVII, of the Amendments to the
18 Constitution.

19 “Article 97 lands or easements”, lands or easements taken or acquired for natural resource
20 purposes under Article 97.

21 “Change in use” or “used for other purposes”, a diversion of Article 97 lands or easements, or
22 portion thereof, from existing use.

23 “Disposition”, "dispose" or “disposed”, the transfer of physical or legal custody or control of
24 lands or easements, or a portion thereof, by conveying, relinquishing, leasing for any term,
25 granting of interests in, or transferring by any other means physical or legal custody or control,
26 regardless of whether the transfer is for the same or different uses, or for consistent or
27 inconsistent purposes.

28 “Lands or easements”, lands; easements; conservation restrictions, agricultural preservation
29 restrictions and watershed preservation restrictions, as defined in section 31 of chapter 184; and
30 other restrictions or conditions contained in a deed, grant or other instrument purporting to
31 transfer or convey an interest in land, regardless of the term of such easements, restrictions or
32 conditions.

33 “Natural resource purposes”, the purposes described in Article 97.

34 “Owner”, the commonwealth department, agency, authority, public instrumentality, town,
35 municipality or political subdivision that owns or has care, custody or control of the lands or

36 easements for which there is a proposed disposition or change in use.

37 “Replacement land”, lands or easements acquired by the owner that are of equal or greater area,
38 market value and natural resource value and of comparable location and use, as compared with
39 the Article 97 lands or easements being disposed of or used for other purposes; lands or
40 easements already protected under Article 97 shall not qualify as replacement land.

41 “Taken or acquired”, obtained by gift, purchase, devise, grant, exchange, lease, taking by
42 eminent domain or otherwise, by the commonwealth, any of its political subdivisions or bodies
43 politic, or any instrumentality thereof, or through use of public funds, including land bank funds.

44 Section 3. It shall be the policy of the general court not to ,enact legislation to allow a
45 disposition or change in use of lands or easements taken or acquired for natural resource
46 purposes under Article 97, unless the owner of the lands or easements provides the general court
47 the following:-

48 (a) a statement from the secretary of energy and environmental affairs as to whether the lands or
49 easements are classified as Article 97 lands or easements;

50 (b) a metes and bounds description of the lands or easements;

51 (c) a copy of the deed conveying the lands or easements to the present owner;

52 (d) a statement of the market value, as defined in 12 CFR 323.2(g), of the lands or easements that
53 is substantiated by an appraisal, as defined in 12 CFR 323.2(a), which meets the minimum
54 appraisal standards set forth in 12 CFR 323.4 and which is prepared by a state certified or state
55 licensed appraiser, as defined in 12 CFR 323.2(j)-(k);

56 (e) copies of statutorily required approvals by the governing body or officer of the owner,
57 approving the disposition or change in use of the lands or easements and the acquisition of

- 58 replacement land, including, if applicable, copies of required approvals by the local conservation
59 commission, which shall have been obtained prior to approval by the governing body or officer;
- 60 (f) an alternatives analysis approved by the secretary of energy and environmental affairs;
- 61 (g) a metes and bounds description of the replacement land;
- 62 (h) a copy of a signed offer, signed purchase and sale agreement, fully executed lease, deed or
63 other legal documents for the conveyance of the replacement land;
- 64 (i) a statement of the market value, as defined in 12 CFR 323.2(g), of the replacement land that is
65 substantiated by an appraisal, as defined in 12 CFR 323.2(a), which meets the minimum
66 appraisal standards set forth in 12 CFR 323.4, and which is prepared by a state certified or state
67 licensed appraiser, as defined in 12 CFR 323.2(j)-(k);
- 68 (j) a statement from the secretary of energy and environmental affairs that the proposed
69 replacement land meets the requirements set forth in the definition of replacement land.

70 Section 4. Upon application of the owner, the secretary of energy and environmental
71 affairs may grant a waiver releasing the owner from the replacement land requirements, set forth
72 in sub-sections (g) through (j) of Section 3, conditional upon (a) subsequent to disposition there
73 being no change in use or physical change in the lands or easements disposed other than change
74 due to natural causes; (b) any proposed change in use being temporary and within no more than
75 five years from the change in use the lands or easements reverting to the same state and use as
76 existed immediately prior to the change in use; or (c) the lands or easements proposed for
77 disposition or change in use being occupied by pre-existing buildings or sheds, which may
78 include immediately adjacent land containing out-buildings, paved areas or landscaped areas
79 appurtenant to, necessary for and used solely for said pre-existing buildings or sheds. If a waiver

80 is granted such waiver shall be provided to the general court in lieu of the requirements set forth
81 in sub-sections (g) through (j) of Section 3. Any act authorizing disposition or change in use
82 subject to a waiver under condition (a) or (b) of this section shall require that, if at any time said
83 condition on which the waiver is based ceases to be met, title, jurisdiction, control, and other
84 rights and perquisites disposed shall revert to the owner or the change in use shall become
85 invalid and cease to have statutory approval and that any deed, lease, or other instrument
86 effecting the disposition or change in use shall so stipulate.

87 Section 5. The joint committee on bonding, capital expenditures and state assets and the
88 joint committee on municipalities and regional government shall each file a report by August 30
89 of the second year of each legislative session with the clerks of the senate and house of
90 representatives detailing their activities on all bills referred to them that involve dispositions or
91 changes in use of lands or easements taken or acquired for natural resources purposes under
92 Article 97.

93 Section 6. The commonwealth or its agency, authority or instrumentality shall notify the
94 public at least 30 days prior to filing a bill to dispose or change the use of any Article 97 lands or
95 easements.

96 **SECTION 2.** Within 6 months after the effective date of this act, the secretary of energy
97 and environmental affairs shall develop and publish for public review and comment guidelines
98 for conducting an alternatives analysis and identifying replacement land and within 1 year after
99 the effective date of this act shall publish the guidelines in final form.