HOUSE DOCKET, NO. 1080 FILED ON: 1/14/2015

HOUSE . . . . . No. 623

The Commonwealth of Massachusetts

PRESENTED BY:

Ruth B. Balser and 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 adoption of the accompanying bill:

An Act to protect the natural resources of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Ruth B. Balser	*12th Middlesex*
James B. Eldridge	*Middlesex and Worcester*
Frank I. Smizik	*15th Norfolk*
Jay R. Kaufman	*15th Middlesex*
Tricia Farley-Bouvier	*3rd Berkshire*
Michelle M. DuBois	*10th Plymouth*
Denise Provost	*27th Middlesex*
Kathleen O'Connor Ives	*First Essex*
Stephen Kulik	*1st Franklin*
Brian M. Ashe	*2nd Hampden*
Carolyn C. Dykema	*8th Middlesex*
Louis L. Kafka	*8th Norfolk*
James R. Miceli	*19th Middlesex*
Ellen Story	*3rd Hampshire*
Peter V. Kocot	*1st Hampshire*
Jason M. Lewis	*Fifth Middlesex*
David M. Rogers	*24th Middlesex*
Chris Walsh	*6th Middlesex*

Anne M. Gobi	*Worcester, Hampden, Hampshire and Middlesex*
Paul R. Heroux	*2nd Bristol*
Alice Hanlon Peisch	*14th Norfolk*
James J. O'Day	*14th Worcester*
Tom Sannicandro	*7th Middlesex*
Daniel M. Donahue	*16th Worcester*
Mary S. Keefe	*15th Worcester*
Paul McMurtry	*11th Norfolk*
Lori A. Ehrlich	*8th Essex*
Sean Garballey	*23rd Middlesex*
Kay Khan	*11th Middlesex*
Gailanne M. Cariddi	*1st Berkshire*
John W. Scibak	*2nd Hampshire*
John J. Mahoney	*13th Worcester*
William M. Straus	*10th Bristol*
Thomas M. Stanley	*9th Middlesex*
William Smitty Pignatelli	*4th Berkshire*
Benjamin Swan	*11th Hampden*
James M. Murphy	*4th Norfolk*
Daniel J. Ryan	*2nd Suffolk*
Harold P. Naughton, Jr.	*12th Worcester*
Angelo M. Scaccia	*14th Suffolk*

HOUSE DOCKET, NO. 1080 FILED ON: 1/14/2015

HOUSE . . . . . No. 623

By Representative Balser of Newton and Senator Eldridge, a joint petition (accompanied by bill, House, No. 623) of Ruth B. Balser, James B. Eldridge and others relative to the disposition of public lands with conservation protected status. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to protect 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:

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

CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT.

Section 1. Definitions. As used in this chapter, the following words shall have the following meanings: -

"Article 97", Article XLIX, as appearing in Article XCVII, of the Amendments to the Constitution.

"Article 97 lands or easements", land or easements, existing, taken, or acquired for natural resource purposes under Article 97.

10 "Change in use" or "used for other purposes", a conversion of Article 97 land, or
11 easements or portions thereof, from existing use.

12 "Disposition", "dispose" or "disposed", the transfer of physical or legal custody or control
13 of lands or easements, or a portion thereof, by conveying, releasing or relinquishing, leasing for
14 any term, granting of interests in, or transferring by any other means physical or legal custody or
15 control, regardless of whether the transfer is for the same or different uses, or for consistent or
16 inconsistent purposes.

17 "Lands or easements", lands; easements; conservation restrictions, agricultural
18 preservation restrictions and watershed preservation restrictions as defined in section 31 of
19 chapter 184 as amended; and other restrictions or conditions contained in a deed, grant or other
20 instrument purporting to transfer or convey an interest in land, regardless of the term of such
21 easements, restrictions or conditions.

22 "Natural resource purposes", the purposes described in Article 97.

23 "Owner", the commonwealth, department, agency, authority, public instrumentality,
24 town, municipality or political subdivision that has ownership, care, custody or control of the
25 Article 97 lands or easements for which there is a proposed disposition or change in use.

26 "Replacement land", lands or easements acquired or otherwise provided by the owner for
27 natural resource purposes that are of equal or greater area and natural resource value, of
28 comparable use, as close to the current location in the municipality or adjacent municipality as
29 feasible, and with similar or better public access, as compared with the Article 97 lands or
30 easements being disposed of or changed in use. Lands or easements already protected under
31 Article 97 shall not qualify as replacement land, unless they were specifically purchased to be

32 used as replacement land for the subject Article 97 parcel being changed in use or disposed of.
33 Lands restricted from development by law or regulation shall not qualify as replacement land.

34 "Secretary", the secretary of the executive office of energy and environmental affairs.

35 "Taken or acquired", obtained by the commonwealth or its political subdivisions or any
36 instrumentality thereof by gift, purchase, devise, grant, exchange, lease, taking by eminent
37 domain or otherwise, obtained with the use of public funds including land bank funds, or
38 dedicated or used for a period of five or more years.

39 Section 2. In furtherance of the purposes of Article 97, and to ensure no net loss of
40 Article 97 lands or easements,

41 a. an owner changing in use or otherwise disposing of Article 97 lands or easements
42 shall acquire or otherwise provide replacement land, and the deed for any replacement land must
43 clearly state that the land is subject to Article 97 protection; and

44 b. to encourage early consultation on any proposed change in use or disposition of
45 Article 97 lands or easements and finding an alternative to said proposed change in use or
46 disposition, the owner seeking the change in use or disposition shall, as early as practicable as
47 defined in regulations promulgated by the secretary, but in any case prior to the filing or
48 presenting for filing of any petition with the general court to authorize a change in use or
49 disposition of Article 97 lands or easements, notify the secretary of the intention to file or present
50 for filing such a petition, and, to the end that the secretary shall gain a full understanding of,
51 among other things, the proposal, its advantages and disadvantages to the public and the
52 environment, and alternatives to the proposed disposition or change in use, and provide the

53 secretary with such information and documentation as the secretary shall specify, including but
54 not limited to the following:

55 (i) a description of the Article 97 land or easements to be disposed or changed in
56 use, including legal description, location, name of owner, acreage, purpose for which the Article
57 97 land or easements were acquired if known, current use and natural resource purposes and
58 benefits, whether the Article 97 land was received as a result of a gift/bequest with a condition
59 that the land be used for a natural resource purpose, and a description of the proposed disposition
60 or change in use, including the name of any proposed grantee, purpose of the proposed
61 disposition or change in use, proposed new use, and anticipated physical changes to or on the
62 Article 97 land or easements;

63 (ii) copy of the deed or deeds conveying the Article 97 land or easements to the
64 present owner and any restrictions or easements affecting the Article 97 land or easements;

65 (iii) copies of any orders, certificates, permits, votes or other approvals required and
66 issued or taken in connection with such disposition or change in use, including, if applicable,
67 copies of required approvals by the local conservation commission and other municipal board or
68 commissions which have been obtained prior to approval by the municipal governing body or
69 officer;

70 (iv) description of the proposed replacement land, unless a waiver is granted under
71 Section 3, including legal description, location, name of title holder, acreage, current use, fair
72 market value, and any other information necessary to establish that the replacement land meets
73 the definition.

74 (v) information regarding any municipal, state or federal funding used to acquire the
75 Article 97 land or easements to be affected by the disposition or change in use, and, if applicable,
76 such funding used or to be used to acquire the proposed replacement land; and

77

78 (vi) an analysis, of such scope and detail as the secretary shall specify, of
79 alternatives to the proposed disposition or change in use.

80 Section 3. Upon request of the owner, the secretary may grant a waiver releasing the
81 owner from the requirements set forth in Section 2 but only as such requirements relate to
82 replacement land, conditional upon:

83 (a) the lands or easements currently serve a public natural resource purpose, and
84 subsequent to disposition there would be no change in use or physical change in the lands or
85 easements disposed other than change due to natural causes;

86 (b) any proposed change in use being temporary and, within no more than five years from
87 the change in use, the lands or easements reverting to the same state and use as existed
88 immediately prior to the change in use;

89 (c) the lands or easements proposed for disposition or change in use being occupied
90 primarily and substantially by pre-existing, non-encroaching buildings or sheds, which may
91 include immediately adjacent land areas containing out-buildings, paved areas or landscaped
92 areas appurtenant to, necessary for and used solely for said pre-existing buildings or sheds; or

93 (d) the lands or easements having an area of 2,500 square feet or less, the secretary of
94 energy and environmental affairs providing a statement that the lands or easements are

95 insignificant for natural resource purposes, and the lands or easements not being part of a
96 contiguous area of Article 97 lands or easements any part of which have been approved by
97 statute for disposition or change in use within the five years prior to the date the owner requests
98 the waiver for the proposed disposition or change in use.

99 Section 4. The secretary shall provide to the general court and to the governor an opinion
100 with respect to any proposed change in use or disposition of Article 97 lands or easements as to
101 whether the change in use or disposition is necessary and lacks a feasible alternative; whether the
102 requirements of Section 2b have been met; and if no waiver has been granted under Section 3,
103 whether the proposed replacement land meets the definition of replacement land and whether the
104 proposed legislation authorizing the disposition or change in use requires that the replacement
105 land be acquired. The secretary may recommend enactment of the proposed legislation, if the
106 secretary provides said opinion in the affirmative on all requirements in Sections 2 and 3, and
107 shall recommend against enactment otherwise. The secretary may recommend against enactment
108 even if the requirements in Sections 2 and 3 are met if he believes, in his discretion, that the
109 proposed disposition or change in use is contrary to the public interest. The secretary shall
110 convey all such opinions in writing and provide notice of and access to each opinion in the next
111 issued Environmental Monitor.

112 Section 5. Following any disposition of Article 97 lands or easements, the interest,
113 custody, care or control transferred shall revert to the owner, if no waiver has been granted for
114 said transfer under Section 3 or within 12 months (extendable by the secretary for good cause
115 shown) of said disposition the condition of Section 2a has not been met; if a waiver for said
116 transfer has been granted pursuant to Section 3a and at any time the condition of said Section 3a
117 ceases to be met; or if a waiver was been granted pursuant to Section 3b and after 60 months

118 from the enactment of the proposed legislation the condition of said Section 3b shall not have
119 been met.

120 Section 6. An owner, if not a municipality, shall, six months prior to filing of legislation
121 for the disposition or change in use of Article 97 lands or easements, provide public notice of
122 said intent to file, including a copy of the proposed legislation.

123 Section 7. Any sale, transfer, lease, or change in the control or use of any Article 97 land
124 held by a municipality shall be subject to two-thirds vote in support of the disposition by the
125 conservation commission or other controlling board or commission and then the Town Meeting
126 or City Council.

127 Section 8. An owner that has disposed of or changed the use of Article 97 land or
128 easements shall submit a report to the secretary upon a project's completion that shall include
129 such information as the secretary shall require, including but not be limited to a description of
130 any replacement land acquired or provided.

131 Section 9. The secretary shall compile an annual report of all dispositions of Article 97
132 land or easements, which shall include descriptions of replacement lands conveyed. The report
133 shall be filed with the clerks of the house of representatives and senate and the governor, and
134 shall be made available to the public.

135 Section 10. Within 6 months after the effective date of this act, the secretary shall
136 promulgate regulations to effectuate administration and enforcement of this chapter and within
137 one year after the effective date of this act shall publish the regulations in final form.