

**HOUSE . . . . . No. 1124**

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Ruth B. Balsler***

*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:	DATE ADDED:
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>1/20/2011</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/4/2011</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>2/4/2011</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>2/4/2011</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>2/4/2011</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>	<i>2/4/2011</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>	<i>2/4/2011</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>	<i>1/27/2011</i>
<i>Linda Campbell</i>	<i>15th Essex</i>	<i>1/31/2011</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>	<i>1/31/2011</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>	<i>1/31/2011</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>1/31/2011</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>	<i>2/1/2011</i>
<i>Cynthia S. Creem</i>		<i>2/1/2011</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>	<i>2/2/2011</i>
<i>James B. Eldridge</i>		<i>2/2/2011</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/3/2011</i>
<i>Geraldine M. Creedon</i>	<i>11th Plymouth</i>	<i>2/3/2011</i>

<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>2/3/2011</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>	<i>2/3/2011</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/3/2011</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>2/3/2011</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>	<i>1/26/2011</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>1/25/2011</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>	<i>1/26/2011</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/26/2011</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/26/2011</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>1/27/2011</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	<i>1/27/2011</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>	<i>2/3/2011</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/3/2011</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	<i>1/28/2011</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>	<i>2/4/2011</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>	<i>2/4/2011</i>
<i>William M. Straus</i>	<i>10th Bristol</i>	<i>2/4/2011</i>

**HOUSE . . . . . No. 1124**

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By Ms. Balsler of Newton, a petition (accompanied by bill, House, No. 1124) of Ruth B. Balsler and others for legislation to protect from net loss public lands or easements taken or acquired for natural resource. Environment, Natural Resources and Agriculture.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3438 OF 2009-2010.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Eleven**  
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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:*

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

3           CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT.

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

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

11           “Alternatives analysis”, a description of alternatives to a proposed disposition or change  
12 in use of lands or easements protected under Article 97, including, but not limited to, an analysis  
13 of the most reasonable alternative (other than taking no action) that does not require disposition  
14 or change in use under Article 97; the description of an alternative shall include analysis of cost,  
15 impact on current use, environmental impact and non-financial advantages and disadvantages,  
16 vis-a-vis the proposed disposition or change in use.

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  
20 resource purposes under Article 97.

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

23           “Disposition”, "dispose" or “disposed”, the transfer of physical or legal custody or  
24 control of lands or easements, or a portion thereof, by conveying, relinquishing, leasing for any  
25 term, granting of interests in, or transferring by any other means physical or legal custody or  
26 control, 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  
29 preservation restrictions and watershed preservation restrictions, as defined in section 31 of

30 chapter 184; and other restrictions or conditions contained in a deed, grant or other instrument  
31 purporting to transfer or convey an interest in land, regardless of the term of such easements,  
32 restrictions or 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  
38 greater area, market value and natural resource value and of comparable location and use, as  
39 compared with the Article 97 lands or easements being disposed of or changed in use; 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  
49 lands or easements are classified as Article 97 lands or easements;

50 (b) either in the text of the proposed legislation or separately in writing a description of  
51 the lands or easements, including legal description, location, name of owner, acreage, purpose  
52 for which land was acquired, current use and natural resource benefits, and a description of the  
53 proposed disposition or change in use, including name of any proposed grantee, purpose of the  
54 proposed disposition or change in use, proposed new use, and anticipated physical changes in the  
55 land or easements;

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

57 (d) copies of statutorily required approvals by the governing body or officer of the owner,  
58 approving the disposition or change in use of the lands or easements, including, if applicable,  
59 copies of required approvals by the local conservation commission, which shall have been  
60 obtained prior to approval by the governing body or officer;

61 (e) either in the text of the proposed legislation or separately in writing a description of  
62 the replacement land, including legal description, location, name of landowner, acreage, current  
63 use, and, if the landowner is a public entity, purpose for which land was acquired;

64 (f) an alternatives analysis approved by the secretary of energy and environmental affairs  
65 as being consistent with guidelines published pursuant to SECTION 2;

66 (g) statements of the market value, as defined in 12 CFR 323.2(g), of the lands or  
67 easements and of the replacement land, each substantiated by an appraisal, as defined in 12 CFR  
68 323.2(a), which meets the minimum appraisal standards set forth in 12 CFR 323.4 and which is  
69 prepared by a state certified or state licensed appraiser, as defined in 12 CFR 323.2(j)-(k);

70 (h) copies of statutorily required approvals by the governing body or officer of the owner,  
71 approving the acquisition of the replacement land; and

72 (i) a statement from the secretary of energy and environmental affairs that the proposed  
73 replacement land meets the requirements set forth in the definition of replacement land.

74 Section 4. Upon application of the owner, the secretary of energy and environmental  
75 affairs may grant a waiver releasing the owner from the requirements set forth in sub-sections  
76 (e) through (i) of Section 3, conditional upon:

77 (a) subsequent to disposition there being no change in use or physical change in the lands  
78 or easements disposed other than change due to natural causes, provided the lands or easements  
79 are currently serving a public natural resource purpose;

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

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

87 (d) the lands or easements having an area of 2,500 square feet or less, the secretary of  
88 energy and environmental affairs providing a statement that the lands or easements are  
89 insignificant for natural resource purposes, and the lands or easements not being part of a  
90 contiguous area of Article 97 lands or easements any part of which have been approved by

91 statute for disposition or change in use within the five years prior to filing of legislation  
92 proposing disposition or change in use.

93 If a waiver is granted such waiver shall be provided to the general court in lieu of the  
94 requirements set forth in sub-sections (e) through (i) of Section 3.

95 Section 5. Any act authorizing disposition or change in use of Article 97 lands or  
96 easements shall stipulate that approval of the disposition or change in use shall be conditional  
97 upon acquisition of the replacement land described in Section 3, unless a waiver has been  
98 granted pursuant to Section 4. Any act authorizing disposition or change in use Article 97 lands  
99 or easements subject to a waiver under conditions in Section 4(a) or Section 4(b) shall stipulate  
100 that, if at any time any condition on which the waiver is based ceases to be met, title, jurisdiction,  
101 control, and other rights and perquisites disposed shall revert to the owner or the change in use  
102 shall become invalid and cease to have statutory approval, and any deed, lease, or other  
103 instrument effecting the disposition or change in use shall so state.

104 Section 6. The joint committee on bonding, capital expenditures and state assets and the  
105 joint committee on municipalities and regional government shall each file a report by August 30  
106 of the second year of each legislative session with the clerks of the senate and house of  
107 representatives detailing their activities on all bills referred to them that involve dispositions or  
108 changes in use of lands or easements taken or acquired for natural resources purposes under  
109 Article 97.

110 Section 7. The commonwealth or its agency, authority or instrumentality shall notify the  
111 public at least 30 days prior to filing a bill to dispose or change the use of any Article 97 lands or  
112 easements.



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