SENATE DOCKET, NO. 1111 FILED ON: 1/17/2013

SENATE . . . . . No. 1333

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 adoption of the accompanying bill:

An Act relative to tax exempt property.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	*Middlesex and Worcester*

SENATE DOCKET, NO. 1111 FILED ON: 1/17/2013

SENATE . . . . . No. 1333

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1333) of James B. Eldridge for legislation to sell or convert certain tax exempt property. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1440* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to tax exempt property.

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 5 of chapter 59 of the General Laws, as amended by sections 7A and 8 of chapter 108 of the acts of 2012, is hereby amended by inserting after the first paragraph, the following paragraphs:-

Real property exempt from taxation under clause Third and Eleventh of this section shall not be sold for, or converted to, residential, industrial or commercial use while so exempted unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.

Any notice of intent to sell for other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the property owner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the real property exempted under clause Third and Eleventh of this section, and which shall be a bona fide offer. A bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property

for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the property owner for a fixed consideration payable upon delivery of the deed. Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous real property under the same ownership, and not exempted under clause Third and Eleventh of this section, but sold or to be sold contemporaneously with the proposed sale.

Any notice of intent to convert to other use shall be accompanied by a statement of intent to convert, a statement of proposed use of the real property, the location and acreage of the property as shown on a map drawn at the scale of the assessors map in the city or town in which the property is situated, the name, address and telephone number of the property owner and the owner's attorney, if any.

The notice of intent to sell or convert shall be sent by the property owner by certified mail or hand delivered to the mayor and city council of a city, or board of selectmen of a town, and in the case of either a city or a town, to its board of assessors and its planning board, if any.

A notarized affidavit that the property owner has mailed or delivered a notice of intent to sell or convert shall be conclusive evidence that the owner has mailed the notice in the manner and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to which it relates.

The notice of intent to sell or convert shall be considered to have been duly mailed if addressed to the mayor and city council or board of selectmen in care of the city or town clerk; and to the planning board and assessors if addressed to them directly.

If the notice of intent to sell or convert does not contain all of the material described above, then the town or city, within 30 days after receipt, shall notify the owner in writing that notice is insufficient and does not comply.

For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the property.

In the case of intended or determined conversion not involving sale, the municipality shall have an option to purchase the property at full and fair market value to be determined by an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to the property owner within 30 days after the notice of conversion to the municipality. In the event that the property owner is dissatisfied with the original appraisal, the owner may, at the owner's expense, contract for a second appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties will contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne

equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the municipality and shall be the final determination of consideration. Upon agreement of a consideration, the city or town shall then have 120 days to exercise its option. During the appraisal process, the owner may revoke the intent to convert at any time and with no recourse to either party.

The option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the property owner by certified mail at the address that is specified in the notice of intent. Notice of public hearing shall be given in accordance with section XXXXX of chapter 30A.

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice to the property owner of the city or town's election to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the owner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the owner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period that the owner has agreed to in writing, whichever is later.

At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under the terms and conditions that the mayor or board of selectmen may consider appropriate. Notice of public hearing shall be given in accordance with section 23B of chapter 39.

If the first refusal option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the mayor or board of selectmen shall provide written notice of assignment to the property owner. The notice of assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in addition to the terms and conditions of the assignment. The notice of assignment shall be recorded with the registry of deeds.

Failure to record either the notice of exercise or the notice of assignment within the 120 day period shall be conclusive evidence that the city or town has not exercised its option.

If the option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the option may be exercised by the assignee only by written notice to the property owner signed by the assignee, mailed to the owner by certified mail at the address that is specified in the notice of intent. The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice of exercise to the property owner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and owner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period the owner has agreed to in writing, from the date the contract or agreement, endorsed by the owner, is returned by certified mail to the assignee.

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying and inspecting the land, including, but not limited to, soil testing for purposes of Title V and the taking of water samples.

The city or town or its assignee shall have all rights assigned to the buyer in the purchase and sale agreement contained in the notice of intent.

If the city or town elects not to exercise the option, and not to assign its right to exercise the option, the city or town shall send written notice of nonexercise, signed by the mayor or board of selectmen, to the property owner by certified mail at the address that is specified in the notice of intent. The notice of nonexercise shall contain the name of the owner of record of the land and description of the premises adequate for identification of them and shall be recorded with the registry of deeds.

No sale or conversion of the land shall be consummated until the option period has expired or the notice of nonexercise has been recorded with the registry of deeds, and no sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided in this section.

This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the parties in the manner described in this section for notice of intent to sell or convert, and the giving of notice may be established by an affidavit as described above.