

SENATE . . . . . No. 402

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 protecting the natural resources of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	Middlesex and Worcester
Ruth B. Balser	12th Middlesex
Kathleen O'Connor Ives	First Essex
Stephen Kulik	1st Franklin
James R. Miceli	19th Middlesex
Jason M. Lewis	Fifth Middlesex
Michael F. Rush	Norfolk and Suffolk
Kenneth J. Donnelly	Fourth Middlesex
Jennifer E. Benson	37th Middlesex
Denise Provost	27th Middlesex
Michael J. Barrett	Third Middlesex
Cory Atkins	14th Middlesex
Marjorie C. Decker	25th Middlesex
Carolyn C. Dykema	8th Middlesex
Carmine L. Gentile	13th Middlesex
Chris Walsh	6th Middlesex
Barbara A. L'Italien	Second Essex and Middlesex
Mary S. Keefe	15th Worcester

*Anne M. Gobi*

*Worcester, Hampden, Hampshire and  
Middlesex*

*Benjamin Swan*

*11th Hampden*

*Daniel J. Ryan*

*2nd Suffolk*

*Mark C. Montigny*

*Second Bristol and Plymouth*

**SENATE . . . . . No. 402**

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By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 402) of James B. Eldridge, Kathleen O'Connor Ives, Stephen Kulik, James R. Miceli and other members of the General Court for legislation to protect the natural and historic resources of the Commonwealth. Environment, Natural Resources and Agriculture.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 361 OF 2013-2014.]

**The Commonwealth of Massachusetts**

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

3 CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT.

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

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

8 "Article 97 lands or easements", land or easements, existing, taken, or acquired for  
9 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 use,  
56 including legal description, location, name of owner, acreage, purpose for which the Article 97  
57 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 present  
64 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 (vi) an analysis, of such scope and detail as the secretary shall specify, of alternatives to  
78 the proposed disposition or change in use.

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

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

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

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

92 (d) the lands or easements having an area of 2,500 square feet or less, the secretary of  
93 energy and environmental affairs providing a statement that the lands or easements are  
94 insignificant for natural resource purposes, and the lands or easements not being part of a  
95 contiguous area of Article 97 lands or easements any part of which have been approved by  
96 statute for disposition or change in use within the five years prior to the date the owner requests  
97 the waiver for the proposed disposition or change in use.

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

111 Section 5. Following any disposition of Article 97 lands or easements, the interest,  
112 custody, care or control transferred shall revert to the owner, if no waiver has been granted for  
113 said transfer under Section 3 or within 12 months (extendable by the secretary for good cause  
114 shown) of said disposition the condition of Section 2a has not been met; if a waiver for said



115 transfer has been granted pursuant to Section 3a and at any time the condition of said Section 3a  
116 ceases to be met; or if a waiver was been granted pursuant to Section 3b and after 60 months  
117 from the enactment of the proposed legislation the condition of said Section 3b shall not have  
118 been met.

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

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

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

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

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