

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

<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>

SENATE No. 402

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.

[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)

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

feasible, and with similar or better public access, as compared with the Article 97 lands or easements being disposed of or changed in use. Lands or easements already protected under Article 97 shall not qualify as replacement land, unless they were specifically purchased to be used as replacement land for the subject Article 97 parcel being changed in use or disposed of. Lands restricted from development by law or regulation shall not qualify as replacement land.

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

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

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

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

b. to encourage early consultation on any proposed change in use or disposition of Article 97 lands or easements and finding an alternative to said proposed change in use or disposition, the owner seeking the change in use or disposition shall, as early as practicable as defined in regulations promulgated by the secretary, but in any case prior to the filing or presenting for filing of any petition with the general court to authorize a change in use or disposition of Article 97 lands or easements, notify the secretary of the intention to file or present for filing such a petition, and, to the end that the secretary shall gain a full understanding of,

among other things, the proposal, its advantages and disadvantages to the public and the environment, and alternatives to the proposed disposition or change in use, and provide the secretary with such information and documentation as the secretary shall specify, including but not limited to the following:

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

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

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

(iv) description of the proposed replacement land, unless a waiver is granted under Section 3, including legal description, location, name of title holder, acreage, current use, fair

market value, and any other information necessary to establish that the replacement land meets the definition.

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

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

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

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

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

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

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

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

Section 5. Following any disposition of Article 97 lands or easements, the interest, custody, care or control transferred shall revert to the owner, if no waiver has been granted for said transfer under Section 3 or within 12 months (extendable by the secretary for good cause 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.