

HOUSE No. 01124

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 passage of the accompanying bill:

An Act to protect the natural resources of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>Gailanne Cariddi</i>	<i>1st Berkshire</i>
<i>William "Smitty" Pignatelli</i>	<i>4th Berkshire</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>

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

HOUSE No. 01124

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.

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

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 easements
5 taken or acquired for natural resource purposes, consistent with Article 97, are a vital and
6 indispensable public natural resource and, therefore, that there shall be no net loss of public lands
7 or easements taken or acquired for natural resource purposes as a result of disposition or change
8 in use of these lands.

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

11 “Alternatives analysis”, a description of alternatives to a proposed disposition or change in use of
12 lands or easements protected under Article 97, including, but not limited to, an analysis of the
13 most reasonable alternative (other than taking no action) that does not require disposition or
14 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 resource
20 purposes under Article 97.

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

23 “Disposition”, "dispose" or “disposed”, the transfer of physical or legal custody or control of
24 lands or easements, or a portion thereof, by conveying, relinquishing, leasing for any term,
25 granting of interests in, or transferring by any other means physical or legal custody or control,
26 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 preservation
29 restrictions and watershed preservation restrictions, as defined in section 31 of chapter 184; and

30 other restrictions or conditions contained in a deed, grant or other instrument purporting to
31 transfer or convey an interest in land, regardless of the term of such easements, restrictions or
32 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 greater area,
38 market value and natural resource value and of comparable location and use, as compared with
39 the Article 97 lands or easements being disposed of or changed in use; lands or easements
40 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 disposition
45 or change in use of lands or easements taken or acquired for natural resource purposes under
46 Article 97, unless the owner of the lands or easements provides the general court the following:

47 (a) a statement from the secretary of energy and environmental affairs as to whether the lands or
48 easements are classified as Article 97 lands or easements;

49 (b) either in the text of the proposed legislation or separately in writing a description of the lands
50 or easements, including legal description, location, name of owner, acreage, purpose for which

51 land was acquired, current use and natural resource benefits, and a description of the proposed
52 disposition or change in use, including name of any proposed grantee, purpose of the proposed
53 disposition or change in use, proposed new use, and anticipated physical changes in the land or
54 easements;

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

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

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

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

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

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

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

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

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

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

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

86 (d) the lands or easements having an area of 2,500 square feet or less, the secretary of energy and
87 environmental affairs providing a statement that the lands or easements are insignificant for
88 natural resource purposes, and the lands or easements not being part of a contiguous area of
89 Article 97 lands or easements any part of which have been approved by statute for disposition or
90 change in use within the five years prior to filing of legislation proposing disposition or change
91 in use.

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

94 Section 5. Any act authorizing disposition or change in use of Article 97 lands or easements shall
95 stipulate that approval of the disposition or change in use shall be conditional upon acquisition of
96 the replacement land described in Section 3, unless a waiver has been granted pursuant to

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

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

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

111 SECTION 2. Within 6 months after the effective date of this act, the secretary of energy and
112 environmental affairs shall develop and publish for public review and comment guidelines for

113 conducting an alternatives analysis and identifying replacement land and within 1 year after the
114 effective date of this act shall publish the guidelines in final form.