

SENATE No. 491

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

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 responding to the threat of invasive species.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>1/29/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/29/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/29/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/30/2019</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>	<i>1/30/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/1/2019</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>2/1/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/1/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/1/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/1/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/1/2019</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>2/4/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/13/2019</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>2/26/2019</i>

SENATE No. 491

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 491) of Patricia D. Jehlen, Carolyn C. Dykema, Mike Connolly, Jack Patrick Lewis and other members of the General Court for legislation to respond to the threat of invasive species. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act responding to the threat of invasive species.

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. Chapter 10, as appearing in the 2016 Official Edition, of the General Laws
2 is hereby amended by adding the following sections:-

3 Section 78. As used in section 79, the following words shall have the following meanings
4 unless the context clearly requires otherwise:-

5 “committee”, the invasive species advisory committee established under section 38 of
6 chapter 20;

7 “coordinator”, the statewide invasive species coordinator established under section 36 of
8 chapter 20;

9 “council”, the invasive species council established under section 34 of chapter 20;

10 “department”, the department of agricultural resources;

11 “recurring maintenance projects”, invasive species projects that previously received grant
12 funding and require long-term control or management activity.

13 Section 79. (a) There shall be a fund to be known as the Invasive Species Trust Fund.
14 Notwithstanding any general or special law to the contrary, there shall be credited to the fund: (i)
15 any revenue from appropriations or other money authorized by the general court and specifically
16 designated to be credited to the fund, (ii) any gifts, grants, private contributions or investment
17 income earned by the fund’s assets and all other sources and (iii) any monies provided
18 voluntarily from anyone applying for sporting, hunting, fishing and trapping licenses.

19 (b) The fund, subject to appropriation, shall be received and held in trust solely for: (i)
20 support to the council and committee, (ii) the department’s invasive species office established
21 under section 36 of chapter 20, (iii) development and implementation of the statewide strategic
22 management plan for invasive species pursuant to section 32 of chapter 20, (iv) research and
23 pilot projects at Massachusetts universities, colleges, non-profit organizations and other facilities
24 to test new and emerging technologies for controlling invasive species, and (v) grants awarded
25 under paragraph (d). The fund shall be administered by the coordinator for the purposes of
26 development and implementation of the strategic management plan, research, pilot projects, and
27 grants. The fund shall be administered by the council for all other purposes.

28 (c) No expenditure from the fund shall cause the fund to be in deficiency at the close of
29 the fiscal year. Money in the fund at the end of the fiscal year shall not revert to the General
30 Fund and shall be available for expenditure in the subsequent year and shall not be subject to
31 section 5C of chapter 29.

32 (d) A municipality, or group of municipalities, a cooperative invasive species
33 management area, a non-profit or an agency of the state, which desires state assistance to control
34 invasive species, may apply in writing to the invasive species office in a manner prescribed by
35 the office. When the office finds that a proposed invasive species control program aligns with
36 objectives developed in the statewide strategic management plan, and is suitable to eradicate,
37 control, or minimize the effect an invasive species has on the ecosystem under consideration, it
38 may grant an award as determined necessary by the office. Recurring maintenance projects may
39 be awarded grants of up to seventy-five percent the full amount of the annual project cost for a
40 maximum of five years. In approving requests and determining the amount of any grant, the
41 office shall consider the following: (i) the long-range impacts of the strategic management plan
42 developed by the applicant, (ii) the natural resources to be conserved and protected by such
43 control, (iii) the presence of any invasive species prioritized by the council, (iv)
44 recommendations from the committee, and (v) any impact on endangeres, threatened or special
45 concern species listed under chapter 131A.

46 (e) In prescribing such manner of application for state assistance, the office shall require
47 applicants to develop a management plan and shall offer consultation for development of such
48 plans. The plans shall (i) identify root causes of the existing invasive species problem, (ii)
49 specify control techniques to manage or eradicate the existing infestation, (iii) identify and
50 specify control techniques that will minimize adverse environmental impact to the surrounding
51 area, (iv) specify best management practices to prevent future infestations, and (v) identify the
52 adverse impact of such specified control techniques on any rare species listed under chapter
53 131A.

54 (f) The office shall make awards to priority projects to the extent that funds are available.
55 First priority shall be projects to manage incipient infestations of invasive species with the
56 potential for eradication, second priority shall be projects to prevent or control the further spread
57 of an invasive species, and third priority shall be recurring maintenance projects. In establishing
58 priorities for individual projects, the office shall consider the following: (i) public accessibility
59 and recreational uses; (ii) the importance to commercial, agricultural or other interests; (iii) the
60 degree of local interest, including municipal or other support to the project; (iv) local efforts to
61 control invasive species; (v) other considerations affecting feasibility of achieving long-term
62 control including the need for multi-year control efforts; and (vi) necessity or advantage of the
63 proposed work. In all cases, the office shall consider whether the proposed project is included in
64 or compatible with applicable law and regulations, and whether the proposed project furthers
65 goals established by the statewide strategic management plan.

66 SECTION 2. Chapter 20, as appearing in the Official Edition, of the General Laws is
67 hereby amended by adding sections 33 to section 38:-

68 Section 33. For the purposes of this chapter, the following words shall have the following
69 meanings unless the context clearly requires otherwise:--

70 “citizen science”, scientific data collection that engages the public;

71 “committee”, the invasive species advisory committee;

72 “cooperative invasive species management area”, a regional partnership that focuses on
73 cooperation, coordination and education between departments, tribal governments, stakeholders,
74 Massachusetts universities, private and not-for-profit organizations, other states, the federal
75 government and any other appropriate parties to manage and control regional invasive species;

76 “coordinator”, the statewide invasive species coordinator;

77 “council”, the invasive species council;

78 “department”, the department of agricultural resources;

79 “introduction”, the intentional or unintentional escape, release, dissemination, or
80 placement of a species into an ecosystem as a result of human activity;

81 “introduction pathway”, the mechanism by which an invasive species enters
82 Massachusetts;

83 “invasive species”, a species that is non-native to the ecosystem under consideration, and
84 whose introduction causes or is likely to cause economic or environmental harm or harm to
85 human health;

86 “Massachusetts Aquatic Invasive Species Management Plan”; a five-year plan, created by
87 the Massachusetts Aquatic Invasive Species Working Group, for aquatic invasive species
88 management in Massachusetts with the goal of implementing a coordinated approach to
89 minimizing the ecological and economic impacts of aquatic invasive species in marine and
90 freshwater environments. The plan was the first comprehensive effort to assess the impacts and
91 threats of aquatic invasive species in Massachusetts and was published in December 2002;

92 “native species”, a species that, other than as a result of an introduction, historically
93 occurred or currently occurs in a particular ecosystem;

94 “naturalized”, the process by which a non-native species, without the aid and benefits of
95 cultivation in Massachusetts, freely and regularly reproduces and persists over time to the point
96 that it becomes established in the ecosystem under consideration;

97 “non-native species”, a species that is introduced or not naturally occurring, based on the
98 species biology, phylogeny, distribution, and current knowledge about the species, within
99 Massachusetts;

100 “potentially invasive species”, are non-native species not currently known to be
101 naturalized in Massachusetts, but that can be expected to become invasive within minimally
102 managed habitats within the Commonwealth. As defined here, "species" includes all synonyms,
103 subspecies, varieties, forms, and cultivars of that species unless proven otherwise by a process of
104 scientific evaluation.

105 “priority conservation area”, an area determined by identifying at all scales the natural
106 and cultural resources at risk from invasive species.

107 Section 34. (a) There shall be a Massachusetts invasive species council which shall
108 provide policy level direction, coordination, and planning among state departments, federal
109 agencies, and international and local initiatives for the control and eradication of invasive species
110 infestations throughout the state and prevent the introduction of potentially invasive species. The
111 council shall build upon the strength of existing invasive species programs, identify and address
112 state level organizational and resource needs with respect to invasive species, and integrate the
113 state’s invasive species response into an efficient, unified plan.

114 (b) The council shall consist of a total of 13 members and shall include:

115 (1) The commissioner of the department of conservation and recreation or a designee;

116 (2) The commissioner of the department of environmental protection or a designee;

117 (3) The commissioner of the department of agricultural resources;

- 118 (4) The commissioner of the department of fish and game or a designee;
- 119 (5) The executive director of the Massachusetts water resources authority or a designee;
- 120 (6) The secretary of the Massachusetts Department of Transportation or a designee;
- 121 (7) The commissioner of the department of public health or a designee;
- 122 (8) The president of the University of Massachusetts or a designee;
- 123 (9) The coordinator; and
- 124 (10) Two non-governmental members of the committee to be selected by the
125 committee pursuant to section 38.
- 126 (c) The commissioner of the department shall serve as chair of the council.
- 127 (d) Any designee assignment shall be based on background or interest in invasive species,
128 with preference towards individuals with experience on a state or regional invasive species
129 council, organization or working group.
- 130 (e) The council shall invite one representative from the national invasive species council,
131 United States department of agriculture, the United States fish and wildlife service, the United
132 States environmental protection agency, and the United States coast guard to participate on the
133 council in a nonvoting, ex officio capacity.
- 134 (f) Each member shall serve for the length of their position in a state agency and until a
135 successor is appointed. Members appointed from the committee shall serve for the length of their
136 membership with the committee.

137 (g) The council shall meet at least quarterly and shall regularly consult with the
138 committee. The members of the council shall not be compensated for their services but may be
139 entitled to be reimbursed out of any funds available for the purpose, for their actual traveling and
140 other expenses necessarily incurred in the performance of their official duties, but such
141 reimbursements shall not in any fiscal year exceed the amount set by the chair.

142 (h) The council may consult with any organization, educational institution, or
143 governmental agency.

144 (i) A majority vote of members shall be required for an action of the council. A quorum
145 shall exist pursuant to section 18 of chapter 30A. The chair or six members of the council may
146 call a meeting; provided, however, that notice of all meetings shall be given pursuant to sections
147 18 to 25 of chapter 30A.

148 (j) The council, at the call of the chair, shall hold public hearings for the purpose of fact-
149 finding, receiving public comments, or conducting inquiries concerning invasive species. The
150 council shall prepare for public review and include in its reports a summary of the comments and
151 recommendations made at the public meetings;

152 (k) The council shall report annually at the end of each calendar year on budgetary and
153 other issue regarding invasive species. The information reported shall include, but not be limited
154 to: (i) a summary of the council's activities; (ii) the performance of the council's duties; (iii)
155 efforts in the state to identify and manage invasive species; and (iv) budgetary recommendations
156 for invasive species. The report shall be filed with the clerks of the senate and the house, the
157 senate and house committees on ways and means, the joint committee on environment, natural
158 resources and agriculture, and the governor.

159 Section 35. The council, through its member agencies, shall:

160 (a) maintain oversight of invasive species in the state, and assess the scope and
161 magnitude of the environmental, ecological, agricultural, economic, recreational and social
162 impacts caused by invasive species in the state;

163 (b) recommend legislation as well as administrative policies and programs to improve the
164 state's administration and support of invasive species programs and policies;

165 (c) advise, consult and coordinate invasive species-related efforts with and between state
166 agencies, as well as state, federal, international, and privately organized programs and policies;

167 (d) identify and prioritize each agency's organizational and resource needs with respect to
168 invasive species;

169 (e) assist state agencies in reviewing the agency performance measures, by the council's
170 standard, for accountability concerning invasive species actions;

171 (f) direct invasive species policy for state agencies and ensure that all state agency
172 programs and policies are consistent with the invasive species policies created by the council;

173 (g) create and maintain a list of all established categories of invasive species, including
174 banned invasive species, and confirmed sightings of such species in a statewide database that
175 incorporates existing data from agencies, or, if found suitable by the council, expand current
176 databases and reporting systems to ensure public access to invasive species information and
177 distribution;

178 (h) establish and maintain a list of current potentially invasive species identified as
179 threats, with focus on those species threatening priority conservation areas, and promulgate
180 agency regulations for such species;

181 (i) issue an advisory when there is a discovery in the state of a species listed as
182 potentially invasive and not recorded in the state prior to such discovery; the public advisory
183 shall, to the extent information is available, describe in plain language the (i) species location,
184 (ii) waters and land areas negatively affected or expected to be negatively affected by the
185 species, (iii) best management practices for the species provided its location, (iv) introduction
186 pathways, (v) a state plan for eradicating, if possible, or controlling the infestation, and (vi) such
187 information as the council shall prescribe by regulation or directive;

188 (j) incorporate and expand the Massachusetts Invasive Plant Advisory Group's invasive
189 plant assessment to the extent appropriate for the council's invasive species control and
190 eradication efforts, and create a yearly evaluation system for listing new species and de-listing
191 others;

192 (k) review the department's regulations for the Massachusetts prohibited plant list and
193 ensure appropriate administration of the prohibited plant list;

194 (l) promote use of native species as alternatives to horticulturally and commercially used
195 invasive species and create a list of suitable, tested native alternatives for commonly used
196 invasive species;

197 (m) review state agency mandates and commercial interests that call for the maintenance
198 of invasive or potentially invasive species as resources for sport hunting, aesthetic resources, or
199 other values;

200 (n) encourage industries and trade organizations to develop and adopt voluntary codes of
201 conduct designed to reduce or eliminate the use and distribution of invasive species, reviewing
202 such voluntary codes of conduct and officially recognizing approved codes;

203 (o) restrict the sale, purchase, possession, propagation, introduction, importation,
204 transport and disposal of invasive species, and establish grace periods for prohibited species so
205 businesses can plan management of existing stock;

206 (p) review the structure of and establish fines and penalties to ensure maximum
207 deterrence for invasive species-related crimes;

208 (q) identify and establish new methods to increase revenue for the invasive species trust
209 fund established under section 79 of chapter 10;

210 (r) prioritize the actions of the council based on the needs of the department's invasive
211 species office established under section 36, and effectively respond to such needs;

212 (s) approve by affirmative vote and implement the statewide strategic management plan
213 for invasive species with the invasive species office;

214 (t) collaborate and coordinate efforts with the federal invasive species council and its
215 national invasive species management plan;

216 (u) coordinate a response or promote a statewide position with respect to the impact
217 climate change has on invasion risk in the state and identify ways to translate climate research
218 into invasive species management action;

219 (v) develop, foster and maintain partnerships with non-profit organizations to collaborate
220 on projects, policies and programs;

221 (w) adopt rules pursuant to effectuate this chapter; and

222 (x) perform any other function necessary to effectuate the purposes of this section.

223 Section 36. (a) The department shall establish and maintain a comprehensive invasive
224 species office for the purpose of promoting the ecological integrity of the state's lands and
225 waterways by controlling invasive species and strategically coordinating management efforts
226 across the state. The office shall focus on each function of invasive species management,
227 including at a minimum, prevention, management, education, and collaboration. The office, with
228 respect to each function, shall: (i) prevent the introduction or re-introduction of invasive or
229 potentially invasive species, (ii) eradicate or control invasive species through early detection and
230 rapid response and best management practices, (iii) target invasive species education to the
231 general public, schools, industries, government agencies, and other organizations, and (iv)
232 facilitate development and support of cooperative invasive species management areas that
233 maximize regional resources and impact.

234 (b) To coordinate office activities, provide the necessary technical oversight, and staff the
235 office, the department shall appoint a statewide invasive species coordinator. The coordinator
236 shall devote full time and attention to the duties assigned by the department. The coordinator
237 shall be a person with skill and experience in natural resource and invasive species management,
238 botany, and entomology. The coordinator shall be responsible for overall office management,
239 including administration of assigned functions of the invasive species grant program established
240 under chapter 10 of section 79, development of educational materials and workshops, and
241 coordination with other invasive species management activities across the state. The coordinator
242 shall develop the state's invasive species strategic management plan with assistance from the

243 council and committee. The coordinator shall update the plan or develop a new plan a minimum
244 of once every five years. The coordinator shall have such duties and authority as deemed
245 reasonable by the department to ensure state agency cooperation and support from the council
246 and committee.

247 (c) The department shall develop programming to conduct field work to survey for
248 invasive species and review projects funded by the grant program. The monitoring program will,
249 in coordination with other state planning and remediation activities, comprehensively survey
250 designated sections of the state to identify and map invasive species infestations. The monitoring
251 program shall develop partnerships and citizen science programs to ensure comprehensive
252 monitoring of the state.

253 (d) The office shall coordinate with cities and towns to combat the negative effects of
254 invasive species and increase resources and funding that support city and town-sponsored
255 activities involving invasive species. The office shall identify all federal and private funds
256 available to the state and to private entities to address invasive species and assist state
257 departments, private and non-profit entities to acquire these funds.

258 Section 37. The comprehensive, statewide strategic management plan shall include
259 prevention, early detection and rapid response, control, enforcement, and education of the public
260 with respect to all taxa of invasive species, as well as create a mission statement establishing the
261 state's position against invasive species. The plan shall, at a minimum:

262 (a) describe the impacts and threats of invasive species in the state;

263 (b) recommend interagency responsibilities;

- 264 (c) recommend city and town coordination;
- 265 (d) describe state level coordination;
- 266 (e) identify research needs and set research priorities;
- 267 (f) set education priorities;
- 268 (g) identify needs for additional staff positions at state agencies;
- 269 (h) recommend partnerships with private and non-profit entities;
- 270 (i) advance a system for early detection and rapid response;
- 271 (j) establish a centralized framework for sharing invasive species information;
- 272 (k) prioritize invasive species management and advance preparedness;
- 273 (l) recommend state actions to recover ecosystem resilience;
- 274 (m) evaluate the long term success of current state programs and efforts; and
- 275 (n) create a guide for uniform administration of section 40 of chapter 131 when alteration
- 276 of a wetland area for invasive species management requires a permit with the local conservation
- 277 commission, and recommend ways to improve the permit process to facilitate invasive control

278 The plan shall evaluate and incorporate, as appropriate, the approved Massachusetts
279 Aquatic Invasive Species Management Plan, and maximize efforts to receive a federal share for
280 work that falls under the objectives of the National Invasive Species Council.

281 Section 38. (a) There shall be an invasive species advisory committee which shall provide
282 information, advice, and guidance to the council, including but not limited to providing

283 assistance with the creation of an assessment for non-native species and recommendations for
284 best management practices. The committee shall develop data relative to invasive species and
285 assist in the implementation of and any revision to the strategic management plan. The
286 committee shall recommend new partnerships for the council.

287 (b) The committee shall be chaired by the invasive species coordinator and shall meet at
288 the call of the chair or quarterly, but no less than annually. The members of the committee shall
289 not be compensated for their services on the committee but may seek reimbursements out of any
290 funds available for the purpose, for their actual traveling and other expenses necessarily incurred
291 in the performance of the committee's duties, but such reimbursements shall not in any fiscal
292 year exceed the amount set by the chair.

293 (c) The chair shall select up to 16 members with at least one member from each of the
294 following:

- 295 (1) A representative from Mass Audubon;
- 296 (2) A representative from the Nature Conservancy;
- 297 (3) A representative from the Massachusetts Rivers Alliance
- 298 (4) A representative from the New England Forestry Foundation
- 299 (5) A representative from the Massachusetts Invasive Plant Advisory Group
- 300 (6) A representative from the Trustees of Reservations;
- 301 (7) A representative from the New England Wild Flower Society;

- 302 (8) A representative from the Massachusetts Association of Conservation
303 Commissions;
- 304 (9) A representative from the Natural Heritage and Endangered Species Program
305 of the department of fish and game;
- 306 (10) A representative from the Division of Ecological Restoration of the
307 department of fish and game;
- 308 (11) A representative from the department of agricultural resources;
- 309 (12) A representative from the New England Nursery Association;
- 310 (13) A representative from the Massachusetts Nursery and Landscape
311 Association;
- 312 (14) A representative from the Massachusetts Congress of Lake and Pond
313 Associations;
- 314 (15) A representative from a Massachusetts biodiversity research institute or
315 university; and
- 316 (16) A veterinarian or biologist conducting research and monitoring of wildlife
317 and plant diseases that are presently infecting flora and fauna in the state.
- 318 (d) Selection to the committee shall be for a four year term.
- 319 (e) The committee, by a vote of a majority of its members, shall select two committee
320 members to represent the committee on the Invasive Species Council, pursuant to Section 34.

321 SECTION 3. Said section 39 of chapter 90B, as so appearing, is hereby amended by
322 striking out second paragraph and inserting in place thereof the following paragraphs:-

323 There shall be a surcharge of 25 per cent on a fine assessed against a person convicted of
324 or found responsible for a violation under this chapter or a violation of a special regulation made
325 under this chapter. Notwithstanding the distribution of fines, penalties and forfeitures under
326 section 10G of chapter 21A, 20 per cent of the 25 per cent surcharge shall be deposited into the
327 Massachusetts Environmental Police Trust Fund and 5 percent of the surcharge shall be
328 deposited into the Invasive Species Trust Fund.

329 SECTION 4. Section 12 of Chapter 131, as so appearing, is hereby amended by inserting
330 after paragraph 2, the following paragraph:-

331 Section 40. (a) The Division of Fisheries and Wildlife shall include on all application for
332 sporting, fishing, hunting or trapping licenses, an option for applicants to voluntarily donate to
333 the Invasive Species Trust Fund established in Section 1.