

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

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Eldridge, James - Rep. (HOU)**

*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 protecting the natural resources of the Commonwealth

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Eldridge, James - Rep. (HOU)	Middlesex and Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S00542 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine  
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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

2 SECTION 1.

3 The General Laws are hereby amended by inserting after chapter 132B the following chapter:-

4

CHAPTER 132C.

5

PUBLIC LANDS PRESERVATION ACT.

6

7 Section 1. It is hereby declared to be the policy of the commonwealth that lands or  
8 easements taken or acquired for natural resource purposes, consistent with Article 97, are a vital  
9 and indispensable public natural resource and, therefore, that there shall be no net loss of public  
10 lands or easements taken or acquired for natural resource purposes as a result of disposition or  
change in use of these lands.

11

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

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14 “Alternatives analysis”, a description of alternatives to a proposed disposition or change in use of  
15 lands or easements protected under Article 97, including, but not limited to an analysis of the  
16 most reasonable alternative (other than taking no action) that does not require a disposition or  
17 change in use under Article 97; the description of an alternative shall include analysis of cost,  
impact on current use and environmental impact.

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19 “Article 97”, Article XLIX, as appearing in Article XCVII, of the Amendments to the  
Constitution.

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“Article 97 lands or easements”, lands or easements taken or acquired for natural resource

21 purposes under Article 97.

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

24 “Disposition”, “dispose” or “disposed”, the transfer of physical or legal custody or control of  
25 lands or easements, or a portion thereof, by conveying, relinquishing, leasing for any term,  
26 granting of interests in, or transferring by any other means physical or legal custody or control,  
27 regardless of whether the transfer is for the same or different uses, or for consistent or  
28 inconsistent purposes.

29 “Lands or easements”, lands; easements; conservation restrictions, agricultural preservation  
30 restrictions and watershed preservation restrictions, as defined in section 31 of chapter 184; and  
31 other restrictions or conditions contained in a deed, grant or other instrument purporting to  
32 transfer or convey an interest in land, regardless of the term of such easements, restrictions or  
33 conditions.

34 “Natural resource purposes”, the purposes described in Article 97.

35 “Owner”, the commonwealth department, agency, authority, public instrumentality, town,  
36 municipality or political subdivision that owns or has care, custody or control of the lands or  
37 easements for which there is a proposed disposition or change in use.

38 “Replacement land”, lands or easements acquired by the owner that are of equal or greater area,  
39 market value and natural resource value and of comparable location and use, as compared with  
40 the Article 97 lands or easements being disposed of or used for other purposes; lands or  
41 easements already protected under Article 97 shall not qualify as replacement land.

42 “Taken or acquired”, obtained by gift, purchase, devise, grant, exchange, lease, taking by  
43 eminent domain or otherwise, by the commonwealth, any of its political subdivisions or bodies  
44 politic, or any instrumentality thereof, or through use of public funds, including land bank funds.

45 Section 3. It shall be the policy of the general court not to enact legislation to allow a  
46 disposition or change in use of lands or easements taken or acquired for natural resource  
47 purposes under Article 97, unless the owner of the lands or easements provides the general court  
48 the following:-

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

51 (b) a metes and bounds description of the lands or easements;

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

53 (d) a statement of the market value, as defined in 12 CFR 323.2(g), of the lands or easements that  
54 is substantiated by an appraisal, as defined in 12 CFR 323.2(a), which meets the minimum  
55 appraisal standards set forth in 12 CFR 323.4 and which is prepared by a state certified or state  
56 licensed appraiser, as defined in 12 CFR 323.2(j)-(k);

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

61 (f) an alternatives analysis approved by the secretary of energy and environmental affairs;

62 (g) a metes and bounds description of the replacement land;

- 63 (h) a copy of a signed offer, signed purchase and sale agreement, fully executed lease, deed or  
64 other legal documents for the conveyance of the replacement land;
- 65 (i) a statement of the market value, as defined in 12 CFR 323.2(g), of the replacement land that is  
66 substantiated by an appraisal, as defined in 12 CFR 323.2(a), which meets the minimum  
67 appraisal standards set forth in 12 CFR 323.4, and which is prepared by a state certified or state  
68 licensed appraiser, as defined in 12 CFR 323.2(j)-(k);
- 69 (j) a statement from the secretary of energy and environmental affairs that the proposed  
70 replacement land meets the requirements set forth in the definition of replacement land.

71 Section 4. Upon application of the owner, the secretary of energy and environmental  
72 affairs may grant a waiver releasing the owner from the replacement land requirements, set forth  
73 in sub-sections (g) through (j) of Section 3, conditional upon (a) subsequent to disposition there  
74 being no change in use or physical change in the lands or easements disposed other than change  
75 due to natural causes; (b) any proposed change in use being temporary and within no more than  
76 five years from the change in use the lands or easements reverting to the same state and use as  
77 existed immediately prior to the change in use; or (c) the lands or easements proposed for  
78 disposition or change in use being occupied by pre-existing buildings or sheds, which may  
79 include immediately adjacent land containing out-buildings, paved areas or landscaped areas  
80 appurtenant to, necessary for and used solely for said pre-existing buildings or sheds. If a waiver  
81 is granted such waiver shall be provided to the general court in lieu of the requirements set forth  
82 in sub-sections (g) through (j) of Section 3. Any act authorizing disposition or change in use  
83 subject to a waiver under condition (a) or (b) of this section shall require that, if at any time said  
84 condition on which the waiver is based ceases to be met, title, jurisdiction, control, and other  
85 rights and perquisites disposed shall revert to the owner or the change in use shall become  
86 invalid and cease to have statutory approval and that any deed, lease, or other instrument  
87 effecting the disposition or change in use shall so stipulate.

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89 Section 5. The joint committee on bonding, capital expenditures and state assets and the  
90 joint committee on municipalities and regional government shall each file a report by August 30  
91 of the second year of each legislative session with the clerks of the senate and house of  
92 representatives detailing their activities on all bills referred to them that involve dispositions or  
93 changes in use of lands or easements taken or acquired for natural resources purposes under  
94 Article 97.

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96 Section 6. The commonwealth or its agency, authority or instrumentality shall notify the  
97 public at least 30 days prior to filing a bill to dispose or change the use of any Article 97 lands or  
98 easements.

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100 SECTION 2. Within 6 months after the effective date of this act, the secretary of energy and  
101 environmental affairs shall develop and publish for public review and comment guidelines for  
102 conducting an alternatives analysis and identifying replacement land and within 1 year after the  
103 effective date of this act shall publish the guidelines in final form.

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