HOUSE DOCKET, NO. 3250 FILED ON: 1/18/2013

HOUSE . . . . . No. 657

The Commonwealth of Massachusetts

PRESENTED BY:

Ruth B. Balser

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:

An Act to protect the natural resources of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Ruth B. Balser	*12th Middlesex*
Jason M. Lewis	*31st Middlesex*
Martha M. Walz	*8th Suffolk*
Peter V. Kocot	*1st Hampshire*
Tom Sannicandro	*7th Middlesex*
Colleen M. Garry	*36th Middlesex*
Kay Khan	*11th Middlesex*
Denise Provost	*27th Middlesex*
Christine E. Canavan	*10th Plymouth*
Angelo M. Scaccia	*14th Suffolk*
Mary S. Keefe	*15th Worcester*
Patricia D. Jehlen	*Second Middlesex*
David M. Rogers	*24th Middlesex*
Gailanne M. Cariddi	*1st Berkshire*
Daniel B. Winslow	*9th Norfolk*
Carolyn C. Dykema	*8th Middlesex*
James B. Eldridge	*Middlesex and Worcester*
Paul R. Heroux	*2nd Bristol*

Alice Hanlon Peisch	*14th Norfolk*
Thomas P. Conroy	*13th Middlesex*
Bruce E. Tarr	*First Essex and Middlesex*

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HOUSE . . . . . No. 657

By Ms. Balser of Newton, a petition (accompanied by bill, House, No. 657) of Ruth B. Balser 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. *1124* OF 2011-2012.]

The Commonwealth of Massachusetts

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:

SECTION 1. The General Laws are hereby amended by inserting after chapter 132B the following chapter:-

CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT.

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

"Alternatives analysis", a description of alternatives to a proposed disposition or change in use of lands or easements protected under Article 97, including, but not limited to, an analysis of the most reasonable alternative that does not require disposition or change in use under Article 97. An alternatives analysis must be performed by the proponent of the disposition to the satisfaction of the executive office of energy and environmental affairs and its agencies. The alternatives analysis may include analysis of cost, impact on current use, environmental impact and non-financial advantages and disadvantages as a result of the proposed disposition or change in use. The scope of alternatives shall extend to any sites that were available at the time the proponent of the Article 97 disposition first notified the controlling agency of the Article 97 land.

20 “Appraisal”, a written statement independently and impartially prepared by a state certified or
21 state licensed appraiser setting forth an opinion as to the fair market value of an adequately
22 described property as of a specific date, supported by the presentation and analysis of relevant
23 market information.
24
25 “Article 97”, Article XLIX, as appearing in Article XCVII, of the Amendments to the
26 Constitution.
27
28 “Article 97 lands or easements”, land or easements taken or acquired for natural resource
29 protection purposes.
30
31 “Change in use” or “used for other purposes”, a conversion of Article 97 land or easements or
32 portions thereof, to uses inconsistent with natural resource protection purposes.
33
34 “De minimus conversion”, a disposition of less than 5000 square feet of Article 97 land or
35 easements to a political subdivision of the commonwealth; a disposition of Article 97 land or
36 easements for natural resource protection purposes; a change in use of less than 2500 square feet
37 of Article 97 land or easements to another public purpose; or a disposition or change in use of
38 Article 97 land or easements which the owner has determined have insignificant resource value,
39 are not useful to the owner’s operations, and do not benefit other Article 97 land or easements.
40
41
42 “Disposition”, "dispose" or “disposed”, the transfer of physical or legal custody or control of
43 lands or easements, or a portion thereof, by conveying, releasing or relinquishing, leasing for any
44 term, granting of interests in, or transferring by any other means physical or legal custody or
45 control, regardless of whether the transfer is for the same or different uses, or for consistent or
46 inconsistent purposes.
47
48 “Fair market value”, the price, expressed in terms of cash equivalents, at which property would
49 change hands between a hypothetical willing and able buyer and a hypothetical willing and able
50 seller, acting at arm’s length in an open and unrestricted market, when neither is under
51 compulsion to buy or sell and when both have reasonable knowledge of the relevant facts, and
52 assuming the property would or could be put to its highest and best economic use.
53
54 “Lands or easements”, lands; easements; conservation restrictions, agricultural preservation
55 restrictions and watershed preservation restrictions, as defined in section 31 of chapter 184 as
56 amended; and other restrictions or conditions contained in a deed, grant or other instrument
57 purporting to transfer or convey an interest in land, regardless of the term of such easements,
58 restrictions or conditions.
59

60 “Natural Resource Protection Purposes”, the protection, conservation, control, use, increase or
61 development of the resources and values described in Article 97 for the purposes set forth in
62 Article 97, including but not limited to the natural resources defined in section 1 of chapter 21,
63 as amended, and agricultural, scenic, historic, and cultural resources, public parks and other
64 public recreation areas.
65
66 “Owner”, the commonwealth, department, agency, authority, public instrumentality, town,
67 municipality or political subdivision that has care and control, custody or control of the lands or
68 easements for which there is a proposed disposition or change in use.
69
70 “Replacement land”, land or easements granted or to be granted to the owner or its designee
71 that are of equal or greater fair market value as the Article 97 land or easements to be disposed or
72 used for other purposes, or that have equal or greater value than the Article 97 land or easements
73 as if in the proposed use, whichever is greater; are of equal or greater size, and have equal or
74 greater resource value; provided, however, that Article 97 land or easements shall not qualify as
75 replacement land.
76
77 “Secretary”, the secretary of the executive office of energy and environmental affairs.
78
79 “Taken or acquired”, obtained by the commonwealth or its political subdivisions or any
80 instrumentality thereof by gift, purchase, devise, grant, exchange, lease, taking by eminent
81 domain or otherwise, or obtained with the use of public funds including land bank funds, or
82 dedicated, or used for a period of five or more years.
83
84 Section 2. In furtherance of the purposes of Article 97, and to ensure no net loss of Article 97
85 land or easements, the person, party or entity proposing a change in use or disposition of Article
86 97 land or easements shall, except in the case of a de minimus conversion:
87
88 (a) mitigate the loss of Article 97 land or easements by providing or paying for replacement
89 land, in addition to providing or paying any other mitigation or consideration deemed appropriate
90 by the general court; and
91
92 (b) prior to filing or presenting for filing a petition with the general court to authorize a change
93 in use or disposition of Article 97 land or easements, notify the secretary of the intention to file
94 or present for filing such a petition, together with information and documentation, including but
95 not limited to the following:
96
97 (i) a description of the Article 97 land or easements to be disposed or used for other
98 purposes, including legal description, location, name of owner, acreage, purpose for which the
99 Article 97 land or easements were acquired, current use and natural resource benefits, 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) documentation from the owner indicating the owner's position with regard to the disposition or change in use of the Article 97 land or easements, together with a copy of any orders, certificates, permits, votes or other approvals issued or taken in connection with such disposition or change in use;

(iv) a description of the replacement land, including legal description, location, name of owner, acreage, current use, fair market value, and, if the landowner is a public entity, purpose for which the replacement land was acquired;

(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 replacement land; and

(vi) an alternatives analysis to be approved by the executive office energy and environmental affairs (EOEA) and its agencies.

In the case of a de minimus conversion, the person, party or entity proposing or benefitting from the disposition or change in use of Article 97 land or easements shall pay fair market value for the Article 97 land or easements to be disposed or used for other purposes, or shall provide services or other consideration equal in value to the to the Article 97 land or easements to be disposed or used for other purposes. Monetary payments shall be deposited in an account available to the owner or that can be made available to the owner for natural resource protection purposes.

Section 3. Upon notification by the person, party or entity proposing the change in use or disposition of Article 97 land or easements, the secretary may grant a waiver releasing the owner from the requirements set forth in Section 2, conditional upon:

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

(b) any proposed change in use being temporary and within no more than five years from the

140 change in use the lands or easements reverting to the same state and use as existed immediately
141 prior to the change in use;
142
143 (c) the lands or easements proposed for disposition or change in use being occupied primarily
144 and substantially by pre-existing, non-encroaching buildings or sheds, which may include
145 immediately adjacent land containing out-buildings, paved areas or landscaped areas appurtenant
146 to, necessary for and used solely for said pre-existing buildings or sheds; or
147
148 (d) the lands or easements having an area of 2,500 square feet or less, the secretary of energy
149 and environmental affairs providing a statement that the lands or easements are insignificant for
150 natural resource purposes, and the lands or easements not being part of a contiguous area of
151 Article 97 lands or easements any part of which have been approved by statute for disposition or
152 change in use within the five years prior to filing of legislation proposing disposition or change
153 in use.
154
155 If a waiver is granted such waiver may be provided to the general court in lieu of the
156 requirements set forth in Section 3.
157
158 Section 4. The secretary may submit to the general court, the owner and the proponent of the
159 disposition or change in use a statement indicating: (a) whether the proposed replacement land
160 meets the definition of replacement land as set forth in this chapter,(b) any other consideration
161 that should be paid for the Article 97 land or easements, (c) other recommendations, if any, to
162 mitigate the loss or conversion of the Article 97 land or easements, and (d) whether the secretary
163 supports the proposed Article 97 disposition or change in use.
164
165 Section 5. Any sale, transfer, lease, or change in the control of use of any Article 97 land held
166 by a municipality shall be subject to a two-thirds Town Meeting or City Council vote in support
167 of the disposition.
168
169 Section 6. An owner that has taken or acquired Article 97 land or easements shall be required
170 to submit a report to the secretary upon a project's completion that shall include but not be
171 limited to a description of any replacement land conveyed, consideration paid, or other
172 consideration provided. The secretary shall compile an annual report of all dispositions of
173 Article 97 land or easements, which shall include a description of replacement land conveyed.
174 The report shall be filed with the clerks of the house of representatives and senate and the
175 Governor, and shall be made available to the public.
176
177 Section 7. EOEA shall adopt, amend, or repeal any regulations, as necessary, in order to aid in
178 the administration and enforcement of this chapter.

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