SENATE DOCKET, NO. 522 FILED ON: 1/19/2011

SENATE . . . . . No. 350

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 passage of the accompanying:

An Act protecting the natural resources of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	☐ *[District]* ☐
Frank I. Smizik	*15th Norfolk*
Kenneth J. Donnelly	☐ *[District]* ☐
Bruce E. Tarr	☐ *[District]* ☐
Michael F. Rush	*Suffolk and Norfolk*
Benjamin B. Downing	*Berkshire, Hampshire, and Franklin*
Katherine M. Clark	*Middlesex and Essex*
Susan C. Fargo	☐ *[District]* ☐
Mark C. Montigny	☐ *[District]*

	□
Stephen Kulik	*1st Franklin*
Paul J. Donato	*35th Middlesex*
Jay R. Kaufman	*15th Middlesex*
Thomas P. Conroy	*13th Middlesex*
Carolyn C. Dykema	*8th Middlesex*
Ellen Story	*3rd Hampshire*
Jason M. Lewis	*31st Middlesex*
Cheryl A. Coakley-Rivera	*10th Hampden*
Brian A. Joyce	*Norfolk, Bristol, and Plymouth*
Linda Dorcena Forry	*12th Suffolk*
John F. Keenan	□ *[District]* □

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SENATE . . . . . No. 350

By Mr. Eldridge, petition (accompanied by bill, Senate, No. 350) of James B. Eldridge, Frank I. Smizik, Kenneth J. Donnelly and other members of the General Court for legislation to protect the natural and historic resources of the Commonwealth [Joint Committee on Environment, Natural Resources and Agriculture].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *396* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

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

CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT.

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

Section 2. 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 (other than taking no action) that does not require disposition or 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
22 easements, or portion thereof, from existing use.

23 "Disposition", "dispose" or "disposed", the transfer of physical or legal custody or control
24 of 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
29 preservation restrictions and watershed preservation restrictions, as defined in section 31 of
30 chapter 184; and other restrictions or conditions contained in a deed, grant or other instrument
31 purporting to transfer or convey an interest in land, regardless of the term of such easements,
32 restrictions or 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
38 greater area, market value and natural resource value and of comparable location and use, as
39 compared with the Article 97 lands or easements being disposed of or changed in use; lands or
40 easements 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
45 disposition or change in use of lands or easements taken or acquired for natural resource
46 purposes under Article 97, unless the owner of the lands or easements provides the general court
47 the following:

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

(b) either in the text of the proposed legislation or separately in writing a description of the lands or easements, including legal description, location, name of owner, acreage, purpose for which land was acquired, current use and natural resource benefits, and a description of the proposed disposition or change in use, including name of any proposed grantee, purpose of the proposed disposition or change in use, proposed new use, and anticipated physical changes in the land or easements;

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

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

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

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

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

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

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

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

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

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

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

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

95 Section 5. Any act authorizing disposition or change in use of Article 97 lands or
96 easements shall stipulate that approval of the disposition or change in use shall be conditional
97 upon acquisition of the replacement land described in Section 3, unless a waiver has been
98 granted pursuant to Section 4. Any act authorizing disposition or change in use Article 97 lands
99 or easements subject to a waiver under conditions in Section 4(a) or Section 4(b) shall stipulate
100 that, if at any time any condition on which the waiver is based ceases to be met, title, jurisdiction,
101 control, and other rights and perquisites disposed shall revert to the owner or the change in use
102 shall become invalid and cease to have statutory approval, and any deed, lease, or other
103 instrument effecting the disposition or change in use shall so state.

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

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

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

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