

HOUSE No. 2492

The Commonwealth of Massachusetts

PRESENTED BY:

Carolyn C. Dykema

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 relative to protection of open space.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

HOUSE No. 2492

By Ms. Dykema of Holliston, a petition (accompanied by bill, House, No. 2492) of Carolyn C. Dykema and others relative to the sale or conversion of certain tax exempt property. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2550 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to protection of open space.

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 61B, the
2 following chapter:-

3 CHAPTER 61C

4 SALE OR CONVERSION OF TAX-EXEMPT PROPERTY

5 Section 1. All privately owned real property which is, by-right, exempt from property
6 taxation for 2 or more years due to non-profit status, shall not be sold for, or converted to,
7 residential, industrial or commercial use while so exempted or within 1 year after that time,
8 unless the city or town in which the land is located has been notified of the intent to sell for, or to
9 convert to, such other use.

10 Any notice of intent to sell for such other use shall be accompanied by a statement of
11 intent to sell, a statement of proposed use of the land, the location and acreage of land as shown
12 on a map drawn at the scale of the assessors map in the city or town in which the land is situated,
13 and the name, address and telephone number of the landowner.

14 Any notice of intent to sell for other use shall be accompanied by a certified copy of an
15 executed purchase and sale agreement specifying the purchase price and all terms and conditions
16 of the proposed sale, which is limited to only the property classified under this chapter, and
17 which shall be a bona fide offer as described below.

18 Any notice of intent to sell for other use shall also be accompanied by any additional
19 agreements or a statement of any additional consideration for any contiguous land under the
20 same ownership, and not classified under this chapter, but sold or to be sold contemporaneously
21 with the proposed sale.

22 For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith
23 offer, not dependent upon potential changes to current zoning or conditions or contingencies
24 relating to the potential for, or the potential extent of, subdivision of the property for residential
25 use or the potential for, or the potential extent of development of the property for industrial or
26 commercial use, made by a party unaffiliated with the land-owner for a fixed consideration
27 payable upon delivery of the deed.

28 Any notice of intent to convert to other use shall be accompanied by a statement of intent
29 to convert, a statement of proposed use of such land, the location and acreage of land as shown
30 on a map drawn at the scale of the assessors map in the city or town in which the land is situated,
31 the name, address and telephone number of the landowner and the landowner's attorney, if any.

32 The notice of intent to sell or convert shall be sent by the landowner by certified mail or
33 hand delivered to the mayor and city council of a city, or board of selectmen of a town, and in
34 the case of either a city or a town, to its board of assessors, to its planning board and
35 conservation commission, if any.

36 A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell
37 or convert shall be conclusive evidence that the landowner has mailed the notice in the manner
38 and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to
39 which it relates.

40 The notice of intent to sell or convert shall be considered to have been duly mailed if
41 addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to
42 the planning board and conservation commission if addressed to them directly; to the state
43 forester if addressed to the commissioner of the department of conservation and recreation and to
44 the assessors if addressed to them directly.

45 If the notice of intent to sell or convert does not contain all of the material as described
46 above, then the town or city, within 30 days after receipt, shall notify the landowner in writing
47 that notice is insufficient and does not comply.

48 For a period of 120 days after the day following the latest date of deposit in the United
49 States mail of any notice which complies with this section, the city or town shall have, in the
50 case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

51 In the case of intended or determined conversion not involving sale, the municipality
52 shall have an option to purchase the land at full and fair market value to be determined by an
53 impartial appraisal performed by a certified appraiser hired at the expense of the municipality or

54 its assignee, the original appraisal to be completed and delivered to the landowner within 30 days
55 after the notice of conversion to the municipality. In the event that the landowner is dissatisfied
56 with the original appraisal, the landowner may, at the landowner's expense contract for a second
57 appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after
58 completion of the second appraisal, the parties cannot agree on a consideration, the parties will
59 contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne
60 equally by both parties. The third appraisal shall be delivered to both parties within 90 days after
61 the notice of conversion to the municipality and shall be the final determination of consideration.
62 Upon agreement of a consideration, the city or town shall then have 120 days to exercise its
63 option. During the appraisal process, the landowner may revoke the intent to convert at any time
64 and with no recourse to either party.

65 The option may be exercised only after a public hearing followed by written notice
66 signed by the mayor or board of selectmen, mailed to the landowner by certified mail at the
67 address that is specified in the notice of intent. Notice of the public hearing shall be given in
68 accordance with section 20 of chapter 30A.

69 The notice of exercise shall also be recorded at the registry of deeds and shall contain the
70 name of the record owner of the land and description of the premises adequate for identification
71 of them.

72 The notice to the landowner of the city or town's election to exercise its option shall be
73 accompanied by a proposed purchase and sale contract or other agreement between the city or
74 town and the landowner which, if executed, shall be fulfilled within a period of not more than 90
75 days after the date the contract or agreement, endorsed by the landowner, is returned by certified

76 mail to the mayor or board of selectmen, or upon expiration of any extended period that the
77 landowner has agreed to in writing, whichever is later.

78 At the public hearing or a further public hearing, the city or town may assign its option to
79 a nonprofit conservation organization or to the commonwealth or any of its political subdivisions
80 under the terms and conditions that the mayor or board of selectmen may consider appropriate.
81 Notice of the public hearing shall be given in accordance with section 20 of chapter 30A.

82 If the first refusal option has been assigned to a nonprofit conservation organization or to
83 the commonwealth or any of its political subdivisions as provided in this section, the mayor or
84 board of selectmen shall provide written notice of assignment to the landowner.

85 The notice of assignment shall state the name and address of the organization or agency
86 of the commonwealth which will exercise the option in addition to the terms and conditions of
87 the assignment. The notice of assignment shall be recorded with the registry of deeds.

88 Failure to record either the notice of exercise or the notice of assignment within the 120
89 day period shall be conclusive evidence that the city or town has not exercised its option.

90 If the option has been assigned to a nonprofit conservation organization or to the
91 commonwealth or any of its political subdivisions, the option may be exercised by the assignee
92 only by written notice to the landowner signed by the assignee, mailed to the landowner by
93 certified mail at the address that is specified in the notice of intent.

94 The notice of exercise shall also be recorded with the registry of deeds and shall contain
95 the name of the record owner of the land and description of the premises adequate for
96 identification of them.

97 The notice of exercise to the landowner shall be accompanied by a proposed purchase
98 and sale contract or other agreement between the assignee and landowner which, if executed,
99 shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended
100 period that the landowner has agreed to in writing, from the date the contract or agreement,
101 endorsed by the landowner, is returned by certified mail to the assignee.

102 During the 120 day period, the city or town or its assignees, shall have the right, at
103 reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying
104 and inspecting said land, including but not limited to soil testing for purposes of Title V and the
105 taking of water samples.

106 The city or town or its assignee shall have all rights assigned to the buyer in the purchase
107 and sales agreement contained in the notice of intent.

108 If the city or town elects not to exercise the option, and not to assign its right to exercise
109 the option, the city or town shall send written notice of nonexercise signed by the mayor or board
110 of selectmen to the landowner by certified mail at the address that is specified in the notice of
111 intent. The notice of nonexercise shall contain the name of the owner of record of the land and
112 description of the premises adequate for identification of them, and shall be recorded with the
113 registry of deeds.

114 No sale or conversion of the land shall be consummated until the option period has
115 expired or the notice of nonexercise has been recorded with the registry of deeds, and no sale of
116 the land shall be consummated if the terms of the sale differ in any material way from the terms
117 of the purchase and sale agreement which accompanied the bona fide offer to purchase as
118 described in the notice of intent to sell except as provided herein.

119 This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage
120 shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the
121 sale to the parties in the manner described in this section for notice of intent to sell or convert,
122 and the giving of that notice may be established by an affidavit as described in this section.