

**HOUSE . . . . . No. 01139**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Stephen Kulik*

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*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 amending the conservation restrictions and agricultural preservation statutes..

\_\_\_\_\_  
PETITION OF:

NAME:

| DISTRICT/ADDRESS:

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# HOUSE . . . . . No. 01139

By Mr. Stephen Kulik of Worthington, petition (accompanied by bill, House, No. 01139) of [petitioners] for legislation to amend the conservation restrictions and agricultural preservation statutes. Joint Committee on Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 775 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
\_\_\_\_\_

An Act amending the conservation restrictions and agricultural preservation statutes..

*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. Section 23 of chapter 20 of the General Laws, as appearing in section 62 of  
2 chapter 26 of the acts of 2003, is hereby amended by striking out the third sentence and inserting  
3 in place thereof the following 3 sentences:— Title to agricultural preservation restrictions shall  
4 be held in the name of the commonwealth, except that a city or town in which the land is located,  
5 or a charitable corporation, charitable trust or land bank, which provides assistance satisfactory  
6 to the agricultural lands preservation committee including, but not limited to, providing funds or  
7 portions thereof toward the purchase of the restriction, the providing of legal services or  
8 monitoring and enforcement of the preservation restriction, may hold title to the land jointly with  
9 the commonwealth. The commissioner of the department of agricultural resources may issue a

10 letter of intent requesting the assistance of a non-profit organization as defined in subsection  
11 (c)(3) of section 501 of the United States Internal Revenue Code, in acquiring rights to certain  
12 agricultural land. If the organization acquires the rights, it may sell them to the commissioner  
13 based on a purchase agreement.

14 SECTION 2. Said section 23 of said chapter 20, as so appearing, is hereby further amended by  
15 inserting, at the end of the first paragraph, the following sentence:— Notwithstanding any  
16 general or special law to the contrary, payments made to acquire agricultural preservation  
17 restrictions as defined in section 31 of chapter 184 and provided for in this chapter may, upon the  
18 election of the person conveying such restriction, be made in approximately equal installment  
19 payments spanning not more than 5 years.

20 SECTION 3. Section 5A of chapter 79 of the General Laws, as appearing in the 2000 Official  
21 Edition, is hereby amended by inserting, following the words "or antiquarian interest" the  
22 following: —", and no property protected by a preservation restriction under sections 31 through  
23 33 of chapter 184".

24 SECTION 4. Section 5B of said chapter 79, as so appearing, is hereby amended by inserting in  
25 the title, following the word "Agricultural", the words "and Conservation"; and by inserting in  
26 the first sentence, following the words "one hundred and twenty-eight" the following: — "and no  
27 property protected by a conservation restriction, preservation restriction, agricultural  
28 preservation restriction, or watershed preservation restriction under sections 31 through 33 of  
29 chapter 184".

30 SECTION 5. Said section 5B of said chapter 79, as so appearing, is hereby further amended by  
31 inserting in the first sentence, following the words "as so defined," the following: — "or not so  
32 protected under sections 31 through 33 of chapter 184,".

33 SECTION 6. Section 31 of chapter 184 of the General Laws, as appearing in the 2002 Official  
34 Edition, is hereby amended by deleting from the first sentence in the first paragraph the words  
35 "either in perpetuity or for a specified number of years" and by inserting at the end of said  
36 paragraph the following sentence:

37 Such conservation restrictions shall be in perpetuity or for a specified number of years and shall  
38 only be released as provided in section 32 of chapter 184.

39 SECTION 7. Said section 31 of said chapter 184, as so appearing, is hereby further amended by  
40 inserting at the end of the second paragraph the following sentence: —

41 Such preservation restrictions shall be in perpetuity or for a specified number of years and shall  
42 only be released as provided in section 32 of Chapter 184.

43 SECTION 8. Said section 31 of said chapter 184, as so appearing, is hereby further amended by  
44 striking out the first two sentences of the third paragraph and replacing them with the following  
45 two sentences: —

46 An agricultural preservation restriction means a right, whether or not stated in the form of a  
47 restriction, easement, covenant or condition, in any deed, will or other instrument executed by or  
48 on behalf of the owner of the land appropriate to retaining land or water areas predominantly in  
49 their agricultural farming or forest use, to forbid or limit any or all acts or uses detrimental to

50 such retention of the land for agricultural use. Such agricultural preservation restrictions shall be  
51 in perpetuity and shall only be released as provided in section 32 of Chapter 184.

52 SECTION 9. Said section 31 of said chapter 184, as so appearing, is hereby further amended by  
53 striking out the first two sentences of the fourth paragraph and replacing them with the following  
54 two sentences:-

55 A watershed preservation restriction means a right, whether or not stated in the form of a  
56 restriction, easement, covenant or condition, in any deed, will or other instrument executed by or  
57 on behalf of the owner of the land appropriate to retaining land predominantly in such condition  
58 to protect the water supply or potential water supply of the commonwealth, to forbid or limit any  
59 or all acts or uses detrimental to such watershed. Such watershed preservation restrictions shall  
60 be in perpetuity and shall only be released as provided in section 32 of Chapter 184.

61 SECTION 10. The first paragraph of section 32 of chapter 184 of the General Laws, as appearing  
62 in the 2002 Official Edition, is hereby amended by adding the following sentence:— The  
63 common law doctrine of merger shall not apply to any restrictions approved as provided in this  
64 paragraph.

65 SECTION 11. Said section 32 of said chapter 184, as so appearing, is hereby further amended by  
66 striking out the second and third paragraphs and inserting in place thereof the following 2  
67 paragraphs:—

68 Conservation, preservation, agricultural preservation, watershed preservation and affordable  
69 housing restrictions are interests in land, and may be acquired by any governmental body or  
70 charitable corporations and trusts which have power to acquire interests in land, in the same  
71 manner as it may acquire other interests in land. The conservation, preservation, agricultural

72 preservation, watershed preservation and affordable housing restrictions may be enforced by  
73 injunction or other proceeding and shall entitle representatives of the holder to enter the land in a  
74 reasonable manner and at reasonable times to assure compliance. Restrictions may be released,  
75 in whole or in part, by the holder for consideration, if any, as the holder may determine, in the  
76 same manner as the holder may dispose of land or other interests in land, but only after a public  
77 hearing upon reasonable public notice, by the governmental body holding the restriction, or, if  
78 held by a charitable corporation or trust, by the mayor, or in cities having a city manager, the city  
79 manager, the city council of the city or the selectmen of the town, whose approval shall be  
80 required, and in the case of a restriction requiring approval by the secretary of environmental  
81 affairs, the Massachusetts historical commission, the commissioner of agricultural resources, the  
82 director of urban parks in the department of conservation and recreation, or the director of the  
83 department of housing and community development, only with like approval of the release.  
84 Conservation, agricultural preservation and watershed preservation restrictions, in addition to  
85 other requirements of this section, may be released, in whole or in part, only with approval of  
86 two-thirds of both branches of the general court, by a vote taken by the yeas and nays, that the  
87 restriction shall be released for the public good.

88 No restriction that has been purchased with state funds or which has been granted in  
89 consideration of a loan or grant made with state funds shall be released unless it is repurchased  
90 by the land owner at its then current fair market value. Funds so received shall revert to the fund  
91 sources from which the original purchase, loan or grant was made, or, lacking such sources, shall  
92 be made available to acquire similar interests in other land. Agricultural preservation restrictions  
93 shall be released by the holder only if the land is no longer considered suitable for agricultural or  
94 horticultural purposes and unless two-thirds of both branches of the general court, by a vote

95 taken by yeas and nays, vote that the restrictions shall be released for the public good. Watershed  
96 preservation restrictions shall be released by the holder only if the land is deemed by the  
97 commissioner of conservation and recreation and the secretary of environmental affairs to no  
98 longer be of any importance to the water supply or potential water supply of the commonwealth  
99 and unless two-thirds of both branches of the general court, by a vote taken by yeas and nays,  
100 vote that the restrictions shall be released for the public good.

101 SECTION 12. Said section 32 of said chapter 184, as so appearing, is hereby further amended by  
102 striking out the seventh paragraph and inserting in place thereof the following paragraph: —

103 Nothing in this section shall prohibit the department of telecommunications and energy, without  
104 the need for approval of the general court or of the state authority which approves any affected  
105 restriction, from authorizing the taking of easements for the purpose of utility services, or the  
106 granting of exemptions from any affected restrictions with respect to such easements, provided  
107 that: (a) said department shall require the minimum practicable interference with farming  
108 operations or other purposes of the affected restriction with determination to be made after a  
109 public hearing, which, in the event a public hearing concerning the same land is being or will be  
110 conducted under chapter 164, section 75C, shall be consolidated with such hearing, and of which  
111 all holders of the affected restriction have been given reasonable prior written notice; (b) the  
112 applicant has obtained, or subsequently shall obtain, all necessary licenses, permits, approvals  
113 and other authorizations from the appropriate state agencies; and (c) whether said department  
114 proceeds by authorizing a taking or granting an exemption, the applicant shall, under chapter 79,  
115 compensate the owner of the property and each restriction holder to the extent each interest may  
116 warrant.

117 SECTION 13. Sections 3 through 12 of this act shall apply to all restrictions authorized under  
118 sections 31 and 32 of chapter 184 of the General Laws that exist on the effective date of this act.