HOUSE DOCKET, NO. 1659 FILED ON: 1/17/2013

HOUSE . . . . . No. 748

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen Kulik

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 amending the conservation restrictions and agricultural preservation statutes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Stephen Kulik	*1st Franklin*	*1/17/2013*
Jennifer E. Benson	*37th Middlesex*	*2/1/2013*
Denise Provost	*27th Middlesex*	*1/30/2013*
John W. Scibak	*2nd Hampshire*	*1/30/2013*
Chris Walsh	*6th Middlesex*	*1/28/2013*

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HOUSE . . . . . No. 748

By Mr. Kulik of Worthington, a petition (accompanied by bill, House, No. 748) of Stephen Kulik and others for legislation to amend the conservation restriction and agricultural preservation statutes. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1139* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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:

SECTION 1. Section 23 of chapter 20 of the General Laws, as appearing in section 62 of chapter 26 of the acts of 2010, is hereby amended by striking out the third sentence and inserting in place thereof the following 3 sentences:— Title to agricultural preservation restrictions shall be held in the name of the commonwealth, except that a city or town in which the land is located, or a charitable corporation, charitable trust or land bank, which provides assistance satisfactory to the agricultural lands preservation committee including, but not limited to, providing funds or portions thereof toward the purchase of the restriction, the providing of legal services or monitoring and enforcement of the preservation restriction, may hold title to the land jointly with the commonwealth. The commissioner of the department of agricultural resources may issue a letter of intent requesting the assistance of a non-profit organization as defined in subsection (c)(3) of section 501 of the United States Internal Revenue Code, in acquiring rights to certain agricultural land. If the organization acquires the rights, it may sell them to the commissioner based on a purchase agreement.

SECTION 2. Said section 23 of said chapter 20, as so appearing, is hereby further amended by inserting, at the end of the first paragraph, the following sentence:— Notwithstanding any general or special law to the contrary, payments made to acquire agricultural preservation restrictions as defined in section 31 of chapter 184 and provided for in

this chapter may, upon the election of the person conveying such restriction, be made in approximately equal installment payments spanning not more than 5 years.

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

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

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

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

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

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

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

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

An agricultural preservation restriction means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land appropriate to retaining land or water areas predominantly in their agricultural forming or forest use, to forbid or limit any or all acts or uses detrimental to such retention of the land for agricultural use. Such agricultural preservation restrictions shall be in perpetuity and shall only be released as provided in section 32 of Chapter 184.

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

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

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

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

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

No restriction that has been purchased with state funds or which has been granted in consideration of a loan or grant made with state funds shall be released unless it is repurchased by the land owner at its then current fair market value. Funds so received shall revert to the fund sources from which the original purchase, loan or grant was made, or, lacking such sources, shall be made available to acquire similar interests in other land. Agricultural preservation restrictions shall be released by the holder only if the land is no longer considered suitable for agricultural or horticultural purposes and unless two-thirds of both branches of the general court, by a vote taken by yeas and nays, vote that the restrictions shall be released for the public good. Watershed preservation restrictions shall be released by the holder only if the land is deemed by the commissioner of conservation and recreation and the secretary of environmental affairs to no longer be of any importance to the water supply or potential water supply of the commonwealth and unless two-thirds of both branches of the general court, by a vote taken by yeas and nays, vote that the restrictions shall be released for the public good.

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

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

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