

**HOUSE . . . . . No. 444**

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**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:
<i>Stephen Kulik</i>	<i>1st Franklin</i>	<i>1/18/2017</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	
<i>José F. Tosado</i>	<i>9th Hampden</i>	
<i>Chris Walsh</i>	<i>6th Middlesex</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	

**HOUSE . . . . . No. 444**

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By Mr. Kulik of Worthington, a petition (accompanied by bill, House, No. 444) of Stephen Kulik and others relative to conservation restrictions and agricultural preservation restrictions providing non-development covenants on land. Environment, Natural Resources and Agriculture.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 710 OF 2015-2016.]

**The Commonwealth of Massachusetts**

—————  
**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
—————

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 22 of the General Laws, as appearing in the 2012 Official Edition,  
2 is hereby amended by adding the following paragraph:-

3           A landowner who is subject to a non-development covenant under this section and who  
4 seeks to terminate the non-development covenant and instead seeks payment under section 23 for  
5 an agricultural preservation restriction shall reimburse the department for any compensation  
6 provided under the non-development covenant on a pro-rata basis according to a schedule  
7 established by the department prior to or simultaneous with the granting of the agricultural  
8 preservation restriction.

9           SECTION 2. Chapter 20 of the General Laws is hereby amended by striking out section  
10 23 and inserting in place thereof the following section:—

11           Section 23. (a) The secretary of energy and environmental affairs shall establish a  
12 program to assist the commonwealth in the acquisition of agricultural preservation restrictions as  
13 defined in section 31 of chapter 184, for land actively devoted to agricultural or horticultural uses  
14 as defined in sections 1 to 5, inclusive, of chapter 61A. The commissioner of agricultural  
15 resources, subject to the approval of the secretary, shall establish procedures for management of  
16 the program.

17           The commissioner may, from funds appropriated to carry out this section or received  
18 from other sources, pay any agricultural landowner for a project submitted or approved by a city  
19 or town and approved by the agricultural lands preservation committee established by section 24  
20 the amount determined by the committee to be equitable in consideration of anticipated benefits  
21 from the project, but not to exceed the difference between the fair market value of the land  
22 without an agricultural restriction and the fair market value of the land with an agricultural  
23 restriction. Payments made to acquire agricultural preservation restrictions may, upon the  
24 election of the person conveying such restriction, be made in installment payments spanning not  
25 more than 5 years.

26           Title to agricultural preservation restrictions shall be held in the name of the  
27 commonwealth, provided, however, that: (i) a city or town in which the land is located that  
28 provides assistance satisfactory to the agricultural lands preservation committee, including but  
29 not limited to providing funds or portions thereof toward the purchase of the restriction and  
30 providing legal services, shall hold title to the land jointly with the commonwealth, and (ii) a

31 charitable corporation, charitable trust, or land bank, exempt under 26 U.S.C. section 501(c)(3),  
32 that provides assistance satisfactory to the agricultural lands preservation committee, including  
33 but not limited to providing funds or portions thereof toward the purchase of the restriction and  
34 providing legal services, may hold title jointly with the commonwealth.

35           The commissioner and the corporation, trust, or land bank may enter into a memorandum  
36 of understanding that provides for the corporation, trust, or land bank to acquire an agricultural  
37 preservation restriction in agricultural land which interest in the restriction may thereafter be sold  
38 to the commonwealth.

39           (b) The department of agricultural resources shall have exclusive authority to enforce the  
40 provisions of any agricultural preservation restriction held exclusively or jointly by the  
41 commonwealth, to enforce guidelines established and regulations promulgated under this section  
42 or section 24, to conduct on-site inspections of the restricted land, and to exercise the  
43 enforcement powers authorized by this section. In addition to any other remedies provided by  
44 the restriction or applicable laws, the commissioner may issue enforcement orders to compel the  
45 correction of any violation of the restriction. Any party aggrieved by an enforcement order may  
46 appeal within 30 days to the agricultural lands preservation committee, which may, after notice  
47 and hearing, uphold, amend, or cancel the enforcement order. The commissioner may issue  
48 administrative fines of up to \$500 per violation for failure to comply with an enforcement order,  
49 each day of failure to comply constituting a separate violation. The enforcement order may  
50 require the person found to have violated the restriction to reimburse the commonwealth for the  
51 direct and indirect costs and expenses of enforcement. The enforcement powers and any  
52 adjudicatory proceedings commenced under this section shall be subject to the provisions of  
53 chapter 30A.

54           If the commissioner determines that an enforcement order has not been complied with  
55 within 180 days, the commissioner or his agents may, after giving reasonable notice, enter upon  
56 the restricted land and may take such appropriate action the commissioner deems necessary to  
57 correct the violation. The landowner shall reimburse the commonwealth for the direct and  
58 indirect costs of this action. Any monies received as reimbursement shall be deposited into the  
59 Agricultural Preservation Trust Fund, established by section 2CCCC of chapter 29. The  
60 commissioner of agricultural resources may promulgate regulations to effectuate the purposes of  
61 this section.

62           (c) The commissioner of agricultural resources, with the approval of the co-holder, if any,  
63 may grant to any landowner subject to an agricultural preservation restriction held by the  
64 commonwealth a nonassignable special permit allowing nonagricultural activities including the  
65 placement of alternative energy-generating facilities on the restricted land in accordance with a  
66 detailed plan approved by the commissioner; provided, however, that: (1) the land is being  
67 actively utilized for full-time commercial agriculture; (2) the duration of the permit is for a  
68 maximum of 15 years, which may, at the discretion of the department, be renewed for successive  
69 5-year periods; and (3) the agricultural lands preservation committee finds that the grant of a  
70 special permit will not defeat or derogate from the intent and purposes of retaining the land for  
71 agricultural use and preserving the natural agricultural resources of the commonwealth and that  
72 the landowner meets all requirements pertaining to special permits contained in the agricultural  
73 preservation restriction agreement form utilized by the commonwealth at the time of application  
74 for the special permit. It shall be a condition of a special permit that the primary use of the  
75 restricted parcel and the structures thereon, and the primary source of revenue derived therefrom,  
76 shall at all times be commercial agriculture.

77           The commissioner of agricultural resources may promulgate rules and regulations  
78 governing alternative energy-generating facilities on land subject to an agricultural preservation  
79 restriction to assure the placement, construction, and operation do not defeat or derogate from the  
80 intent of this section, which is to keep land or water areas predominately in their agricultural  
81 farming or forest use. The regulations may require mitigation payments to the Agricultural  
82 Preservation Trust Fund, established by section 2CCCC of chapter 29, and may allow for  
83 prescription or approval of the commercial relationships required to own or operate such  
84 facilities.

85           SECTION 3. Section 24 of said chapter 20, as appearing in the 2012 Official Edition, is  
86 hereby amended by adding the following subsection:-

87           (e) There shall be a land use technical advisory committee. The advisory committee may  
88 recommend rules and regulations for landowners subject to an agricultural preservation  
89 restriction concerning practices that defeat or derogate from the intent of this section, which is to  
90 keep land or water areas predominately in their agricultural farming or forest use.

91           The commissioner may grant an exemption for a landowner who demonstrates that (i)  
92 those rules or regulations or both negatively impact the landowner's ability to maintain a  
93 profitable farming operation and (ii) the exemption will not defeat or derogate from the intent of  
94 this section. The advisory committee shall review a request for an exemption and make  
95 recommendations to the commissioner prior to the commissioner's determination on the  
96 exemption.

97           The advisory committee shall consist of 5 members: (1) a representative of the Natural  
98 Resources Conservation Service with the United States Department of Agriculture, appointed by

99 the Massachusetts director of the National Resource Conservation Service; (2) a representative of  
100 the center for agriculture at University of Massachusetts at Amherst appointed by the dean of the  
101 college of natural sciences; (3) a representative of the Massachusetts Farm Bureau Federation,  
102 Inc., appointed by its board of directors; (4) a representative of a land preservation organization  
103 operating within the commonwealth appointed by the agricultural lands preservation committee;  
104 and (5) a member of the agricultural land preservation committee, appointed by the  
105 commissioner, who shall chair the advisory committee.

106 SECTION 4. Chapter 29 of the General Laws is hereby amended by inserting after  
107 section 2BBBB the following section:--

108 Section 2CCCC. (b) There shall be established and set upon the books of the  
109 commonwealth a separate fund to be administered by the commissioner of agricultural resources,  
110 as trustee, to be known as the Agricultural Preservation Trust Fund. There shall be credited to  
111 the fund any revenue from appropriations or other monies authorized by the general court and  
112 specifically designated to be credited to the fund, any appropriation or grant explicitly made to  
113 the fund and any income derived from the investment of amounts credited to the fund. The funds  
114 deposited in this account shall be expended in accordance with the purposes of the agricultural  
115 preservation, restriction that caused such funds to be deposited into the account.

116 No expenditure from the fund shall cause the fund to be in deficiency at the close of a  
117 fiscal year. Monies deposited in the fund that are unexpended at the end of the fiscal year shall  
118 not revert to the General Fund and shall be available for expenditure in the subsequent fiscal  
119 year.

120 SECTION 5. Chapter 79 of the General Laws is hereby amended by striking out section  
121 5A and inserting in place thereof the following section:--

122 Section 5A. No historical or archeological landmark certified under section 27 of chapter  
123 9, no property owned, preserved and maintained by any historical organization or society as an  
124 ancient landmark or as property of historical or antiquarian interest, and no property protected by  
125 a preservation restriction under sections 31 to 33, inclusive, of chapter 184 shall be taken without  
126 a special law authorizing the taking.

127 SECTION 6. Section 5B of said chapter 79 is hereby amended by striking out the first  
128 sentence, as appearing in the 2012 Official Edition, and inserting in place thereof the following  
129 sentence:-- No property used for agriculture or farming as defined in section 1A of chapter 128  
130 and no property protected by a conservation restriction, preservation restriction, agricultural  
131 preservation restriction, or watershed preservation restriction under sections 31 to 33, inclusive,  
132 of chapter 184 shall be taken without the consent of the owner thereof, nor shall an easement be  
133 taken on such property without such consent, except after a hearing by the board at which such  
134 owner shall be entitled to be heard and allowed to introduce evidence that other land not used for  
135 agriculture or farming, as so defined, or not so protected under sections 31 to 33, inclusive, of  
136 chapter 184, and without occupied buildings situated thereon is available for the public use for  
137 which it is intended to take his property.

138 SECTION 7. Section 31 of chapter 184 of the General Laws, as appearing in the 2012  
139 Official Edition, is hereby amended by striking out, in lines 1 to 2, inclusive, the words ", either  
140 in perpetuity or for a specified number of years."



141 SECTION 8. The first paragraph of said section 31 of said chapter 184, as so appearing,  
142 is hereby amended by adding the following sentence:- A conservation restriction shall be in  
143 perpetuity or for a specified number of years and shall only be released as provided in section 32.

144 SECTION 9. The second paragraph of said section 31 of said chapter 184, as so  
145 appearing, is hereby amended by adding the following sentence: — A preservation restriction  
146 shall be in perpetuity or for a specified number of years and shall only be released as provided in  
147 section 32.

148 SECTION 10. The third paragraph of said section 31 of said chapter 184, as so appearing,  
149 is hereby further amended by striking out the first two sentences and inserting in place thereof  
150 the following two sentences: — An agricultural preservation restriction means a right, whether  
151 or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or  
152 other instrument executed by or on behalf of the landowner appropriate: (a) to retain land or  
153 water areas predominantly in their agricultural farming or forest use, and/or (b) to forbid or limit  
154 any construction or placing of buildings, except for those used for agricultural purposes or for  
155 dwellings used for family living by the landowner, his immediate family or employees or all acts  
156 or uses detrimental to such retention of the land in agricultural use. An agricultural preservation  
157 restriction shall be in perpetuity and shall only be released as provided in section 32.

158 SECTION 11. The fourth paragraph of said section 31 of said chapter 184, as so  
159 appearing, is hereby further amended by striking out the first 2 sentences and inserting in place  
160 thereof the following 2 sentences:- A watershed preservation restriction means a right, whether  
161 or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or  
162 other instrument executed by or on behalf of the landowner appropriate: (a) to retain land

163 predominantly in a condition to protect the water supply or potential water supply of the  
164 commonwealth, and (b) to forbid or limit any or all acts or uses detrimental to the watershed. A  
165 watershed preservation restriction shall be in perpetuity and shall only be released as provided in  
166 section 32.

167 SECTION 12. The first paragraph of section 32 of chapter 184, as so appearing, is  
168 hereby amended by striking, in line 4, the words “or water” and inserting in place thereof the  
169 following words:-- , water, or recreation.

170 SECTION 13. Said first paragraph of said section 32 of said chapter 184, as so  
171 appearing, is hereby further amended by adding the following 2 sentences:— The common law  
172 doctrine of merger shall not apply to any restrictions approved as provided in this paragraph;  
173 notwithstanding this provision, restrictions shall be held or co-held by eligible third parties other  
174 than the owner. Notwithstanding clause (a) of section 27, grantees shall be deemed to be  
175 benefitted by and shall have standing to enforce restrictions under this paragraph.

176 SECTION 14. Said section 32 of said chapter 184, as so appearing, is hereby further  
177 amended by striking out the second and third paragraphs and inserting in place thereof the  
178 following 6 paragraphs:—

179 Conservation, preservation, agricultural preservation, watershed preservation and  
180 affordable housing restrictions are interests in land, and may be acquired by any governmental  
181 body or charitable corporation or trust that has power to acquire interest in land for the purposes  
182 of the restriction, in the same manner as it may acquire other interests in land. A conservation,  
183 preservation, agricultural preservation, watershed preservation or affordable housing restriction  
184 may be enforced by injunction or other proceeding and shall entitle the holder and

185 representatives of the holder to enter the land in a reasonable manner and at reasonable times to  
186 assure compliance.

187         A restriction may be released in whole or in part, including by amendment allowing a  
188 previously prohibited act or use, or an act or use that was not previously reserved or allowed, by  
189 the holder for consideration, if any, as the holder may determine, in the same manner as the  
190 holder may dispose of land or other interests in land, but only after the holder or co-holders has  
191 determined that it is no longer suitable for the purposes of the restriction and after a public  
192 hearing upon reasonable public notice, by the governmental body holding the restriction, or, if  
193 held by a charitable corporation or trust, by the mayor, or in cities having a city manager, the city  
194 manager, the city council of the city or the selectmen of the town, whose approval shall be  
195 required, and in the case of a restriction requiring approval by the secretary of energy and  
196 environmental affairs, the Massachusetts historical commission, the commissioner of agricultural  
197 resources, the director of urban parks in the department of conservation and recreation, or the  
198 director of the department of housing and community development, only with like approval of  
199 the release.

200         Conservation, agricultural preservation and watershed preservation restrictions, in  
201 addition to other requirements of this section, shall not be released, in whole or in part, except by  
202 laws enacted by a two-thirds vote, taken by yeas and nays, of each branch of the general court.

203         No restriction that has been purchased with state funds or which has been granted in  
204 consideration of a loan or grant made with state funds shall be released unless it is repurchased  
205 by the landowner at its then current fair market value. Funds so received shall revert to the fund

206 sources from which the original purchase, loan or grant was made, or, lacking such sources, shall  
207 be made available to acquire similar interests in other land for similar purposes.

208 Conservation restrictions shall be released only if the secretary of energy and  
209 environmental affairs determines that the land is no longer suitable for the purposes of the  
210 restriction. Agricultural preservation restrictions shall be released by the holder only if the  
211 agricultural lands preservation committee, established by section 24 of chapter 20, and the  
212 commissioner of agricultural resources determine that the land is no longer suitable for  
213 agricultural or horticultural purposes. Watershed preservation restrictions shall be released by  
214 the holder only if the commissioner of conservation and recreation and the secretary of energy  
215 and environmental affairs determine that the land is no longer of any importance to the water  
216 supply or potential water supply of the commonwealth.

217 If property has been acquired with state funds or with funds appropriated under chapter  
218 44B or in consideration of a loan or grant made with state funds or with funds appropriated under  
219 chapter 44B and, as a condition of the acquisition, the property requires a restriction under this  
220 chapter, the restriction shall be considered the completion of the acquisition and shall not be  
221 considered a disposition as that term is used in Article 97 of the Amendments to the Constitution;  
222 and, therefore, the restriction, despite the passage of time, shall not subject to the requirement of  
223 a two-thirds vote, by yeas and nays, of each branch of the general court.

224 SECTION 15. Said section 32 of said chapter 184, as so appearing, is hereby further  
225 amended by striking out the seventh paragraph and inserting in place thereof the following  
226 paragraph: —

227           Nothing in this section shall prohibit the department of telecommunications and energy  
228 from authorizing the taking of easements for the purpose of utility services, or the granting of  
229 exemptions from any affected restrictions with respect to those easements, provided that: (a) the  
230 department shall require the minimum practicable interference with farming operations or other  
231 purposes of the affected restriction; (b) the applicant has obtained, or subsequently shall obtain,  
232 all necessary licenses, permits, approvals and other authorizations from the appropriate state  
233 agencies; and (c) whether said department proceeds by authorizing a taking or granting an  
234 exemption, the applicant shall, under chapter 79, compensate the landowner and each restriction  
235 holder to the extent each interest may warrant. The department shall determine the minimum  
236 practicable interference after a public hearing. All holders of the affected restriction shall be  
237 given reasonable, prior written notice of the public hearing. If the land is also subject to a public  
238 hearing under section 75 of chapter 164, the public hearing required under this paragraph shall be  
239 consolidated with that public hearing.

240           SECTION 16. Section 33 of chapter 184, as so appearing, is amended by inserting, in  
241 line 1, after the word “town” the following words:- or holder of a restriction under sections 31  
242 and 32.

243           SECTION 17. Said section 33 of said chapter 184, as so appearing, is hereby further  
244 amended by inserting, in line 25, after the word “body” the following words:- or holder of a  
245 restriction under sections 31 and 32.

246           SECTION 18. Sections 1-17 of this act shall apply to all restrictions authorized under  
247 sections 31 and 32 of chapter 184 of the General Laws that exist on the effective date of this act.