

**HOUSE . . . . . No. 871**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Paul A. Schmid, III***

*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 the use of Department of Conservation and Recreation property for farmers markets and community gardens.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>1/10/2019</i>
<i>Norman J. Orrall</i>	<i>12th Bristol</i>	<i>1/30/2019</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>	<i>2/1/2019</i>
<i>Shawn Dooley</i>	<i>9th Norfolk</i>	<i>1/22/2019</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>1/24/2019</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>1/30/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>1/29/2019</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>1/31/2019</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>	<i>1/25/2019</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>1/30/2019</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	<i>1/31/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/1/2019</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>	<i>1/19/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>2/1/2019</i>

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By Mr. Schmid of Westport, a petition (accompanied by bill, House, No. 871) of Paul A. Schmid, III and others for legislation to authorize the Department of Conservation and Recreation to establish a program to provide for the use of certain state owned land for community gardens and farmers' markets. Environment, Natural Resources and Agriculture.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2937 OF 2017-2018.]

**The Commonwealth of Massachusetts**

—————  
**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
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An Act relative to the use of Department of Conservation and Recreation property for farmers markets and community gardens.

*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. Chapter 132A of the General Laws is hereby amended by inserting after  
2 section 2D, the following 2 sections:-

3           Section 2E. (a) The commissioner of the department of conservation and recreation shall  
4 establish a program to provide for the use of designated lands in state-owned department parks  
5 and reservations throughout the commonwealth for community gardens. Lands so designated  
6 shall be restricted to noncommercial horticultural uses of growing and harvesting food crops by  
7 inhabitants of local communities.

8 Community gardens shall be established as authorized by the commissioner, in open  
9 spaces that are suitable for such recreational gardening activities which are accessible to the  
10 public. Improvements to community garden lands shall to the extent as is practicable, preserve  
11 the natural state of such park and reservation areas.

12 Under the program, specific planting areas that are available within designated  
13 community garden sites shall be allotted for personal use on a seasonal basis by special permits  
14 issued to qualifying individual gardeners.

15 The department shall evaluate, identify and map community garden lands, and post  
16 relevant information about the sites and potential sites on the department's public website.

17 (b) The commissioner shall be authorized to license cities or towns to, establish, improve,  
18 maintain, operate and access local community gardens on designated department land. Said  
19 licenses shall be granted for no fee, upon such terms, restrictions and agreements, and for such  
20 period of years, not exceeding 10, as the commissioner may deem appropriate; provided, that the  
21 land licensed is utilized for the purposes of the department's community garden program  
22 consistent with the applicable rules and regulations of the department, and provided further, that  
23 under said licenses, cities and towns may be responsible for their costs and expenses, or portion  
24 thereof, to establish, improve, maintain and operate community gardens.

25 Cities and towns applying for a license to use department lands under the community  
26 garden program shall submit a plan related to said use, which shall be subject to approval by the  
27 commissioner.

28 (c) The commissioner shall be authorized to license qualified non-profit organizations to,  
29 establish, improve, maintain, operate and access community gardens on designated department

30 land. Said licenses shall be granted, upon such terms, restrictions and agreements, and for such  
31 period of years, not exceeding 5, as the commissioner may deem appropriate; provided, that the  
32 land is used for the purposes of the department's community garden program consistent with the  
33 applicable rules and regulations of the department; and provided further, said licenses are granted  
34 based on a competitive application and proposal process. Notwithstanding, no license shall be  
35 granted to a non-profit organization for designated land unless, the commissioner has first  
36 provided the city or town where the available land is located, the option to be granted a license  
37 for such community garden site.

38 (d) Cities and towns, and non-profit organizations as part of the terms of said licenses,  
39 shall abide by the rules and regulations adopted by the department relating to the use and  
40 operation of community garden lands.

41 Licenses granted for community garden lands under this section, shall be revocable at any  
42 time by the commissioner for the failure of recipient municipalities or non-profit organizations to  
43 comply with such license terms, restrictions and agreements.

44 In no event shall the granting of said licenses be construed to create in such  
45 municipalities or non-profit organizations, any title, right to acquire title, or ownership interest in  
46 licensed lands. The provisions of this subsection shall not prohibit the commissioner from  
47 leasing such lands to municipalities or qualified non-profit organizations under applicable law,  
48 for the purposes of the community garden program.

49 (e) The department or its employees shall not be liable for injuries or death to persons, or  
50 damage to property, resulting from any conduct related to the operation and use of community  
51 gardens on department lands, in the absence of willful, wanton, or reckless conduct on the part of

52 said department or employees; provided, the community garden where such injury or death  
53 occurred, is enclosed by suitable fencing of not less than 4 feet in height and conspicuous  
54 signage warning of such limitation of liability is posted on, or near such fence at garden  
55 entryways.

56 (f) The department shall adopt rules and regulations related to the establishment, use and  
57 operation of community gardens under the department's community garden program.

58 Section 2F. The commissioner of the department of conservation and recreation shall  
59 establish a program to provide for the seasonal use of areas in department parks and reservations  
60 by farmers for public market places. Such public markets shall be limited mainly to the vending  
61 of food and other agricultural products that are grown, raised or produced on Massachusetts  
62 farms.

63 The temporary establishment of said public markets as approved by the commissioner  
64 shall be at suitable land and parking areas accessible by the public, and, at appropriate times  
65 during daylight hours. Under the program, the commissioner shall be authorized to issue special  
66 seasonal permits to farmer vendors, which shall be restricted to specific approved public market  
67 sites and times, upon such terms and conditions as the commissioner may deem appropriate. As a  
68 condition of the issuance of a permit, a farmer vendor shall be required to comply with any laws  
69 and regulations applicable to the vending of food and agricultural products at said public  
70 markets.

71 Special permits issued by the commissioner shall, be based on a competitive application  
72 and proposal process, and be subject to revocation by the commissioner at any time.

73           The commissioner, in consultation with the commissioner of the department of  
74 agricultural resources, shall adopt rules and regulations for said public markets.

75           Farmers' markets allowed pursuant to this section shall not be subject to the commercial  
76 limitations under section 2B of chapter 132A.