HOUSE DOCKET, NO. 1955 FILED ON: 1/20/2011

HOUSE . . . . . No. 1141

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 passage of the accompanying:

An Act to protect farm viability.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Stephen Kulik	*1st Franklin*
John W. Scibak	*2nd Hampshire*
Steven S. Howitt	*4th Bristol*
Stanley C. Rosenberg	*Hampshire and Franklin*
James B. Eldridge	
	☐ *[District]*
	☐

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HOUSE . . . . . No. 1141

By Mr. Kulik of Worthington, a petition (accompanied by bill, House, No. 1141) of Stephen Kulik and others relative to protecting farm viability. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

An Act to protect farm viability.

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:

Chapter xxxxx of the General Laws is hereby amended by inserting after xxxxx the following section:---

Section xxxxx. No general by-law or ordinance shall prohibit, unreasonably regulate, or require a permit for commercial agriculture on land or in structures qualified under G.L. c. 40A, Sec. 3, or agricultural activities, operations, and practices associated therewith. Land divided by a public or private way or a waterway shall be considered one parcel. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term “horticulture” shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained, and managed while on the premises.

SECTION 2:

Chapter 111 of the General Laws is hereby amended by inserting after section 31E the following section:—

Section 31F (a) No local board of health (“board”) regulation (“regulation”) shall prohibit or unreasonably regulate commercial agriculture on land or in structures qualified under G.L. c. 40A, Sec. 3, or agricultural activities, operations, and practices associated therewith. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128.

(b) The applicability of any board regulation shall be deferred in effect as applied to agriculture until and unless the regulation is found to be consistent with Section 31F(a) as provided in this subsection.

22 (1) Within 21 days of the adoption of a regulation, the board of health may submit
23 electronically to commissioner of the department of agricultural resources, through a
24 mechanism specified by the commissioner, a copy of the regulation, a statement that the
25 regulation is not on its face or by necessary implication inconsistent with Section 31F(a),

26 (2) Within 3 businsess days of receipt, the department of agricultural resources shall
27 distribute regulations received pursuant to 31 F (b) 2 to a Preliminary Review Panel consisting of
28 the Commissioners of the departments of Public Health and Agricultural Resources, a
29 representative of the Massachusetts Public Health Association and a representative of the
30 Massachusetts Farm Bureau Federation.

31 (3) Within 21 days of receipt by the Commissioner of Agricultural Resourses members
32 of the Preliminary Review Panel may jointly or separately send to the Commissioner of
33 Agricultural Resources notice of concurrence or objection. If no member objects to the
34 regulations or fails to responds within 21 days, the regulation as applied to agriculture shall
35 thereupon enjoy a presumption of consistency with Section 31F(a); but if within said 21 day
36 period any member of the Preliminary Review Panel shall claim that all or some of the
37 provisions of the regulation are inconsistent with Section 31F(a), said commissioner may send
38 written notice to the board and to the other members of the Preliminary Review Panel explaining
39 such determination and may also propose revisions that, if accepted by the board and the other
40 commissioner, would confer upon the regulation, as thus amended, a presumption of consistency
41 with Section 31F(a).

42 (4) Within 21 days of receipt of the said commissioner's written notice, the board shall
43 take the following action: (i) with the concurrence of the other commissioner vote to accept the
44 proposed revisions, whereupon the regulation shall enjoy a presumption of consistency with
45 Section 31F(a); or (ii) submit the regulation to further review by the Agricultural Review Board
46 ("ARB") established under Section 31F(c) by filing with the commissioners and the ARB a
47 notice of such election. The regulations shall not enjoy a presumption of consistency with
48 Section 31F(a) if the board fails to take such action

49 (5) Within 30 days of receipt of the board's election to submit to further review, the ARB
50 shall hold a Resolution Conference at which the board and the commissioners may make
51 presentations to the ARB as to the consistency of the regulations with Section 31F(a).

52 (6) Within 14 days of the Resolution Conference, unless extended by written agreement
53 of the parties, the ARB shall issue its final recommendations.

54 (7) If the ARB issues no recommendation within 14 days, the regulations as applied to
55 agriculture shall enjoy a presumption of consistency with Section 31F(a).

56 (8) If within 14 days of receipt of the ARB's final recommendations the board adopts the
57 recommendations of the ARB, the regulations shall enjoy a presumption of consistency

58 regarding Section 31F(a); but in the absence of acceptance, the regulations shall not enjoy a
59 presumption of consistency.

60 (c) There shall be an Agricultural Review Board consisting of the commissioner of the
61 Department of Agricultural Resources, the commissioner of the Department of Public Health, the
62 executive director of the Massachusetts Farm Bureau Federation, the executive director of
63 Massachusetts Public Health Association, and the Attorney General, or their designees. The
64 Attorney General, or designee, shall serve as the Chair of the ARB.