

HOUSE No. 01141

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 bill:

An Act to protect farm viability.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Steven Howitt</i>	<i>4th Bristol</i>
<i>Stanley C. Rosenberg</i>	<i>Hampshire and Franklin</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>

HOUSE No. 01141

By Mr. Stephen Kulik of Worthington, petition (accompanied by bill, House, No. 01141) of James Eldridge and others relative to protecting farm viability. Joint Committee on Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

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

12 SECTION 2:

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

15 Section 31F (a) No local board of health (“board”) regulation (“regulation”) shall prohibit or
16 unreasonably regulate commercial agriculture on land or in structures qualified under G.L. c.
17 40A, Sec. 3, or agricultural activities, operations, and practices associated therewith. For the
18 purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128.

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

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

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

31 (3) Within 21 days of receipt by the Commissioner of Agricultural Resources members of the
32 Preliminary Review Panel may jointly or separately send to the Commissioner of Agricultural

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

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

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

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

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

55 (8) If within 14 days of receipt of the ARB's final recommendations the board adopts the
56 recommendations of the ARB, the regulations shall enjoy a presumption of consistency
57 regarding Section 31F(a); but in the absence of acceptance, the regulations shall not enjoy a
58 presumption of consistency.

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