

SENATE No. 1226

The Commonwealth of Massachusetts

PRESENTED BY:

Mr. Brewer

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 relative to authorizing tax credits for qualified donations of certain land to a public or private conservation agency.

PETITION OF:

NAME:

Mr. Brewer

DISTRICT/ADDRESS:

Worcester, Hampden, Hampshire and Franklin

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO AUTHORIZING TAX CREDITS FOR QUALIFIED DONATIONS OF CERTAIN LAND TO A PUBLIC OR PRIVATE CONSERVATION AGENCY.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is forthwith to authorize tax credits for qualified donations of certain land to a public or private conservation agency, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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 6 of chapter 62 of the General Laws is hereby amended by adding the
2 following subsection:-

3 (p)(1) As used in this subsection, the following words shall have the following meanings:-

4 “Bargain sale”, the sale of an interest in real property by a taxpayer at a cost below
5 appraised market value, when a portion of the value of the interest in real property is a qualified
6 donation, as such term is defined herein and which meets the requirements of section 1011(b) of
7 the Internal Revenue Code of 1986, as amended.

8 “Certified land”, an interest in real property, the donation or bargain sale of which has first
9 been determined by the secretary of environmental affairs to be in the public interest for natural

10 resource protection including, but not limited to, drinking water supplies, wildlife habitat and
11 biological diversity, agricultural and forestry production, recreational opportunities, or scenic
12 and cultural values; provided, however, that the secretary of environmental affairs shall assure
13 that all certified lands are protected in perpetuity.

14 “Interest in real property”, any right in real property in the commonwealth, with or without
15 improvements thereon, or water including, but not limited to, fee simple, life estate, restriction,
16 easement, covenant, condition, partial interest, remainder, future interest, lease, license, mineral
17 right, riparian right or other interest or right in real property that may be conveyed concerning
18 the power to transfer property.

19 “Public or private conservation agency”, the commonwealth, or any subdivision thereof, or
20 any municipality, or private nonprofit corporation organized for the purposes of land
21 conservation, which is authorized to do business in the commonwealth, and which has tax-
22 exempt status as a nonprofit charitable organization as described in Section 501(c)(3) of the
23 Internal Revenue Code of 1986, as amended.

24 “Qualified donation”, a donation, or the donated portion of a bargain sale, made in
25 perpetuity of a fee interest in real property or a less-than-fee interest in real property, including a
26 conservation restriction, agricultural preservation restriction or watershed preservation
27 restriction, pursuant to chapter 184, provided that such less-than-fee interest meets the
28 requirements of qualified conservation contributions under section 170(h) of the Internal
29 Revenue Code of 1986.

30 “Taxpayer”, a taxpayer subject to the income tax under this chapter.

31 (2) A taxpayer making a qualified donation of certified land to a public or private
32 conservation agency shall be allowed a credit against the taxes imposed by this chapter. The
33 credit shall be equal to 50 per cent of the fair market value of the qualified donation. The amount
34 of the credit that may be claimed by a taxpayer for each qualified donation shall not exceed
35 \$50,000.

36 (3) The fair market value of certified land shall be substantiated by a qualified appraisal,
37 as defined in United States Treasury Regulation section 1.170A-13(c)(3), and shall be prepared
38 by a qualified appraiser, as defined in United States Treasury Regulation section 1.170A-
39 13(c)(5). For any taxpayer to qualify for the credit provided for in subdivision (2), the taxpayer
40 shall at the same time that the taxpayer files a return for the taxable year in which the credit is
41 claimed, file with the department a summary of a qualified appraisal or, if requested by said
42 department, the taxpayer shall submit the appraisal itself.

43 (4) In any one tax year, the credit used may not exceed the amount of tax liability
44 otherwise owed by the taxpayer. The tax credit shall be taken against the taxes imposed under
45 this chapter and shall not be refundable. Any amount of the credit that exceeds the tax due for a
46 taxable year may be carried forward by the taxpayer to any of the 10 subsequent tax years.

47 (5) All or any tax credits issued in accordance with this section may be in addition to any
48 charitable deductions claimed on the taxpayer's federal income tax return for the same qualified
49 donations of certified lands.

50 (6) Any taxpayer claiming a state income tax or excise tax credit under this section may
51 not claim an additional state income tax credit or deduction during any one tax year for costs
52 related to the same interest in certified lands.

53 (7) Any tax credits which arise under this section from the qualified donation of certified
54 land by a pass-through tax entity such as a trust, estate, partnership, corporation, limited
55 partnership, limited liability partnership, limited liability corporation, subchapter S organization,
56 or other fiduciary, shall be used either by such entity in the event it is the taxpayer on behalf of
57 such entity or by the member, partner, shareholder, or beneficiary, as the case may be, in
58 proportion to its interest in such entity in the event that income, deductions, and tax liability
59 passes through such entity to such member, partner, shareholder, or beneficiary. Such tax credits
60 may not be claimed by both the entity and the member, partner, shareholder, or beneficiary, for
61 the same conveyance.

62 (8) Any tax credits which arise under this chapter from the qualified donations of certified
63 land by a married couple shall be used only if the spouses file a joint return, if both spouses are
64 required to file Massachusetts income tax returns. If only one spouse is required to file a
65 Massachusetts income tax return, that spouse may claim the credit allowed by this chapter on a
66 separate return.

67 (9) The secretaries of energy and environmental affairs and of administration and finance,
68 acting jointly and in writing, shall authorize tax credits under this subsection together with
69 section 38Z of chapter 63 in a cumulative amount, including the current year cost of credits
70 allowed in previous years, that shall not exceed \$2,000,000 annually. No credits shall be
71 allowed under this subsection except to the extent authorized as provided in this paragraph. The
72 commissioner of revenue, after consulting those secretaries concerning, among other things, the
73 land conservation objectives of this section, shall adopt regulations governing applications for
74 and other administration of these tax credits.

75 SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38Z
76 the following section:-

77 Section 38AA. (a) As used in this section, the following words shall have the following
78 meanings:-

79 “Bargain sale”, the sale of an interest in real property by a taxpayer at a cost below
80 appraised market value, when a portion of the value of the interest in real property is a qualified
81 donation, as such terms are defined herein, and which meets the requirements of section 1011(b)
82 of the Internal Revenue Code of 1986, as amended.

83 “Certified land”, an interest in real property, the donation or bargain sale of which has first
84 been determined by the secretary of environmental affairs to be in the public interest for natural
85 resource protection including, but not limited to, drinking water supplies, wildlife habitat and
86 biological diversity, agricultural and forestry production, recreational opportunities or scenic and
87 cultural values; provided, however, that the secretary of environmental affairs shall assure that
88 all certified lands are protected in perpetuity.

89 “Interest in real property”, any right in real property in the commonwealth, with or without
90 improvements thereon, or water, including, but not limited to, fee simple, life estate, restriction,
91 easement, covenant, condition, partial interest, remainder, future interest, lease, license, mineral
92 right, riparian right, or other interest or right in real property that may be conveyed concerning
93 the power to transfer property.

94 “Public or private conservation agency”, the commonwealth, or any subdivision thereof, or
95 any municipality, or private nonprofit corporation organized for the purposes of land
96 conservation, which is authorized to do business in the commonwealth, and which has tax-

97 exempt status as a nonprofit charitable organization as described in section 501(c)(3) of the
98 Internal Revenue Code of 1986, as amended.

99 “Qualified donation”, a donation, or the donated portion of a bargain sale, made in
100 perpetuity of a fee interest in real property or a less-than-fee interest in real property, including a
101 conservation restriction, agricultural preservation restriction or watershed preservation
102 restriction, pursuant to chapter 184, provided that such less-than-fee interest meets the
103 requirements of qualified conservation contributions under section 170(h) of the Internal
104 Revenue Code of 1986.

105 “Taxpayer”, a taxpayer subject to the income tax under this chapter.

106 (b) A taxpayer making a qualified donation of certified land to a public or private
107 conservation agency shall be allowed a credit against the taxes imposed by this chapter. The
108 credit shall be equal to 50 per cent of the fair market value of the qualified donation. The amount
109 of the credit that may be claimed by a taxpayer for each qualified donation shall not exceed fifty
110 thousand dollars.

111 (c) The fair market value of certified land shall be substantiated by a qualified appraisal,
112 as defined in United States Treasury Regulation section 1.170A-13(c)(3), and shall be prepared
113 by a Qualified Appraiser, as defined in United States Treasury Regulation section 1.170A-
114 13(c)(5). For any taxpayer to qualify for the credit provided for in subsection (b) of this section,
115 the taxpayer shall at the same time as the taxpayer files a return for the taxable year in which the
116 credit is claimed, file with the department a summary of a qualified appraisal or, if requested by
117 said department, the taxpayer shall submit the appraisal itself.

118 (d) In any one tax year the credit used may not exceed the amount of tax liability
119 otherwise owed by the taxpayer. The tax credit shall be taken against the taxes imposed under
120 this chapter and shall not be refundable. Any amount of the credit that exceeds the tax due for a
121 taxable year may be carried forward by the taxpayer to any of the 10 subsequent taxable years.

122 (e) Any tax credits issued in accordance with this section may be in addition to any
123 charitable deductions claimed on the taxpayer's federal income tax return for the same qualified
124 donations of certified lands.

125 (f) Any taxpayer claiming a state income tax or excise tax credit under this section may
126 not claim an additional state income tax credit or deduction during any one tax year for costs
127 related to the same interest in certified lands.

128 (g) Any tax credits which arise under this section from the qualified donation of certified
129 land by a pass-through tax entity such as a trust, estate, partnership, corporation, limited
130 partnership, limited liability partnership, limited liability corporation, subchapter S organization,
131 or other fiduciary, shall be used either by such entity in the event it is the taxpayer on behalf of
132 such entity or by the member, partner, shareholder, or beneficiary, as the case may be, in
133 proportion to its interest in such entity in the event that income, deductions, and tax liability
134 passes through such entity to such member, partner, shareholder, or beneficiary. Such tax credits
135 may not be claimed by both the entity and the member, partner, shareholder, or beneficiary, for
136 the same conveyance.

137 (h) The secretaries of energy and environmental affairs and of administration and finance,
138 acting jointly and in writing, shall authorize tax credits under this section together with
139 subsection (p) of section 6 of chapter 62 in a cumulative amount, including the current year cost

140 of credits allowed in previous years, that shall not exceed \$2,000,000 annually. No credits shall
141 be allowed under this section except to the extent authorized as provided in this subsection. The
142 commissioner of revenue, after consulting those secretaries concerning, among other things, the
143 land conservation objectives of this section, shall adopt regulations governing applications for
144 and other administration of these tax credits.

145 SECTION 3. (a) The secretary of energy and environmental affairs shall promulgate regulations
146 to define land eligible for certification under subsection (p) of section 6 of chapter 62 of the
147 General Laws and under section 38AA of chapter 63 of the General Laws. Such regulations
148 shall be promulgated within 180 days after the effective date of this act.

149 (b) The secretary of environmental affairs shall, within 5 years after the effective date of
150 this act, prepare a report to the joint committee on revenue and the joint committee on
151 environment, natural resources and agriculture, describing the certified lands conserved under
152 subsection (p) of section 6 of chapter 62 of the General Laws and section 38AA of chapter 63 of
153 the General Laws.

154 (c) The commissioner of revenue shall, in consultation with the secretary of energy and
155 environmental affairs, promulgate regulations to administer subsection (p) of section 6 of chapter
156 62 of the General Laws and section 38AA of chapter 63 of the General Laws. Such regulations
157 shall include provisions to prevent the generation of multiple credits with respect to the same
158 property. Regulations shall be promulgated within 180 days after the effective date of this act.

159 (d) The commissioner of revenue shall, within 5 years after the effective date of this act,
160 submit a report to the joint committee on revenue and the joint committee on environment,
161 natural resources and agriculture, calculating the annual tax savings under subsection (p) of

162 section 6 of chapter 62 of the General Laws and section 38AA of chapter 63 of the General
163 Laws.

164 (e) There shall be a commission to study the transferability of tax credits under subsection
165 (p) of section 6 of chapter 62 of the General Laws and section 38AA of chapter 63 of the General
166 Laws. The commission shall be composed of 9 persons, including the commissioner of the
167 department of agricultural resources, or his designee, who shall serve as chairman; the
168 commissioner of revenue, or his designee; 2 members of the house of representatives, 1 of whom
169 shall be appointed by the minority leader; 2 members of the senate, 1 of whom shall be appointed
170 by the minority leader; a representative of the American Farmland Trust; a representative of the
171 Massachusetts Audubon Society; and a representative of The Nature Conservancy. The
172 commission shall examine all aspects of transferability including, but not limited to: the status of
173 its application in other states, potential fiscal impacts and potential conservation benefits. The
174 commission shall file a report of its findings and recommendations, including any drafts of
175 legislation necessary to put its recommendations into effect, with the joint committee on revenue
176 and the joint committee on environment, natural resources and agriculture on or before January
177 1, 2011.

178 SECTION 4. Sections 1 and 2 shall be effective for tax years beginning on and after January 1,
179 2011.