

SENATE No. 382

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 Amending the Conservation Restrictions and Agricultural Preservations Statutes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Mr. Brewer	Worcester, Hampden, Hampshire and Franklin
Anne M. Gobi	5th Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00470 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT AMENDING THE CONSERVATION RESTRICTIONS AND AGRICULTURAL PRESERVATIONS 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 23 of chapter 20 of the General Laws, as appearing in section 62 of
2 chapter 26 of the Acts of 2003, is hereby amended by striking out the third sentence and inserting
3 in place thereof the following 3 sentences:— Title to agricultural preservation restrictions shall
4 be held in the name of the commonwealth, except that a city or town in which the land is located,
5 or a charitable corporation, charitable trust or land bank, which provides assistance satisfactory
6 to the agricultural lands preservation committee including, but not limited to, providing funds or
7 portions thereof toward the purchase of the restriction, the providing of legal services or
8 monitoring and enforcement of the preservation restriction, may hold title to the land jointly with
9 the commonwealth. In the case of such joint holding, the restriction shall include a description
10 of the rights and responsibilities of each joint holder with respect to the agricultural preservation
11 restriction. The commissioner of the department of agricultural resources may issue a letter of
12 intent requesting the assistance of a non-profit organization as defined in subsection (c)(3) of

13 section 501 of the United States Internal Revenue Code, in acquiring rights to certain agricultural
14 land. If the organization acquires the rights, it may sell them to the commissioner based on a
15 purchase agreement.

16 SECTION 2. Said section 23 of said chapter 20, as so appearing, is hereby further amended by
17 inserting, at the end of the first paragraph, the following sentence:— Notwithstanding any
18 general or special law to the contrary, payments made to acquire agricultural preservation
19 restrictions as defined in section 31 of chapter 184 and provided for in this chapter may, upon the
20 election of the person conveying such restriction, be made in approximately equal installment
21 payments spanning not more than 5 years.

22 SECTION 3. Section 5A of chapter 79 of the General Laws, as appearing in the 2000 Official
23 Edition, is hereby amended by inserting, following the words "or antiquarian interest" the
24 following: —", and no property protected by a preservation restriction under sections 31 through
25 33 of chapter 184".

26 SECTION 4. Section 5B of said chapter 79, as so appearing, is hereby amended by inserting in
27 the title, following the word "Agricultural", the words "and Conservation"; and by inserting in
28 the first sentence, following the words "one hundred and twenty-eight" the following: — "and no
29 property protected by a conservation restriction, preservation restriction, agricultural
30 preservation restriction, or watershed preservation restriction under sections 31 through 33 of
31 chapter 184".

32 SECTION 5. Said section 5B of said chapter 79, as so appearing, is hereby further amended by
33 inserting in the first sentence, following the words "as so defined," the following: — "or not so
34 protected under sections 31 through 33 of chapter 184,".

35 SECTION 6. Section 31 of chapter 184 of the General Laws, as appearing in the 2002 Official
36 Edition, is hereby amended by deleting from the first sentence in the first paragraph the words
37 "either in perpetuity or for a specified number of years" and by inserting at the end of said
38 paragraph the following sentence: —

39 Such conservation restrictions shall be in perpetuity or for a specified number of years and shall
40 only be released as provided in section 32 of chapter 184.

41 SECTION 7. Said section 31 of said chapter 184, as so appearing, is hereby further amended by
42 inserting at the end of the second paragraph the following sentence: —

43 Such preservation restrictions shall be in perpetuity or for a specified number of years and shall
44 only be released as provided in section 32 of Chapter 184.

45 SECTION 8. Said section 31 of said chapter 184, as so appearing, is hereby further amended by
46 striking out the first two sentences of the fourth paragraph and replacing them with the following
47 two sentences:-

48 A watershed preservation restriction means a right, whether or not stated in the form of a
49 restriction, easement, covenant or condition, in any deed, will or other instrument executed by or
50 on behalf of the owner of the land appropriate to retaining land predominantly in such condition
51 to protect the water supply or potential water supply of the commonwealth, to forbid or limit any

52 or all acts or uses detrimental to such watershed. Such watershed preservation restrictions shall
53 be in perpetuity and shall only be released as provided in section 32 of Chapter 184.

54 SECTION 9. The first paragraph of section 32 of chapter 184 of the General Laws, as appearing
55 in the 2002 Official Edition, is hereby amended by adding at the end the following sentence:-

56 The common law doctrine of merger shall not apply to any restrictions approved as provided in
57 this paragraph.

58 SECTION 10. Said section 32 of said chapter 184, as so appearing, is hereby further amended by
59 striking out the second and third paragraphs and inserting in place thereof the following 2

60 paragraphs:—

61 Conservation, preservation, agricultural preservation, watershed preservation and
62 affordable housing restrictions are interests in land, and may be acquired by any governmental
63 body or charitable corporations and trusts which have power to acquire interests in land, in the
64 same manner as it may acquire other interests in land. The conservation, preservation, watershed
65 preservation and affordable housing restrictions may be enforced by injunction or other
66 proceeding and shall entitle representatives of the holder to enter the land in a reasonable manner
67 and at reasonable times to assure compliance. An action enforcing a conservation, preservation,
68 watershed preservation, or affordable housing restriction may be brought by: 1) an owner of an
69 interest in the real property burdened by the restriction; 2) a holder of the restriction; 3) a
70 governmental body or charitable corporation or trust having a third-party right of enforcement;
71 or 4) a government body authorized by other law. If the court in any judicial enforcement
72 proceeding, or the decision maker in any arbitration or other alternative dispute resolution
73 enforcement proceeding, finds there has been a violation of any such restriction or of any other

74 restriction described in section 26 (C) of this chapter then, in addition to any other relief ordered,
75 the petitioner bringing such action or proceeding shall be awarded reasonable attorneys' fees and
76 costs incurred in such action or proceeding. Restrictions may be amended by agreement between
77 the holder and the landowner , provided that such amendment is consistent with the purpose(s) of
78 the original restriction; provided, that in the case of a restriction held by a governmental body,
79 amendments shall be approved by the secretary of environmental affairs if a conservation
80 restriction, the director of the division of water supply protection in the department of
81 conservation and recreation if a watershed preservation restriction, the commissioner of
82 agricultural resources if an agricultural preservation restriction, the Massachusetts historical
83 commission if a preservation restriction or the director of the department of housing and
84 community development if an affordable housing restriction; provided further, that in the case of
85 a restriction held by a charitable corporation or trust, amendments shall be approved by the
86 mayor, or in cities having a city manager the city manager, and the city council of the city, or
87 selectman or town meeting of the town in which the land is situated, and the secretary of
88 environmental affairs if a conservation restriction, the director of the division of water supply
89 protection in the department of conservation and recreation if a watershed preservation
90 restriction, the commissioner of agricultural resources if an agricultural preservation restriction,
91 the Massachusetts historical commission if a preservation restriction or the director of the
92 department of housing and community development if an affordable housing
93 restriction. Restrictions may be released, in whole or in part, by the holder for consideration, if
94 any, as the holder may determine, in the same manner as the holder may dispose of land or other
95 interests in land, but only after a public hearing upon reasonable public notice, by the
96 governmental body holding the restriction, or, if held by a charitable corporation or trust, by the

97 mayor, or in cities having a city manager, the city manager, the city council of the city or the
98 selectmen of the town, whose approval shall be required, and in the case of a restriction requiring
99 approval by the secretary of environmental affairs, the Massachusetts historical commission, the
100 commissioner of agricultural resources, the director of the division of water supply protection in
101 the department of conservation and recreation, or the director of the department of housing and
102 community development, only with like approval of the release. Conservation, agricultural
103 preservation and watershed preservation restrictions, in addition to other requirements of this
104 section, may be released, in whole or in part, only with approval of two-thirds of both branches
105 of the general court, by a vote taken by the yeas and nays, that the restriction shall be released for
106 the public good.

107 No restriction that has been purchased with state funds or which has been granted in
108 consideration of a loan or grant made with state funds shall be released unless it is repurchased
109 by the land owner at its then current fair market value. Funds so received shall revert to the fund
110 sources from which the original purchase, loan or grant was made, or, lacking such sources, shall
111 be made available to acquire similar interests in other land. Conservation restrictions shall be
112 released by the holder only if the land is deemed by the secretary of environmental affairs to no
113 longer be considered suitable for natural resources purposes and unless two-thirds of both
114 branches of the general court, by a vote taken by yeas and nays, vote that the restrictions shall be
115 released for the public good. Agricultural preservation restrictions shall be released by the
116 holder only if the land is no longer considered suitable for agricultural or horticultural purposes
117 by the commissioner of agricultural resources and unless two-thirds of both branches of the
118 general court, by a vote taken by yeas and nays, vote that the restrictions shall be released for the
119 public good. Watershed preservation restrictions shall be released by the holder only if the land

120 is deemed by the director of the division of water supply protection in the department of
121 conservation and recreation and the secretary of environmental affairs to no longer be of any
122 importance to the water supply or potential water supply of the commonwealth and unless two-
123 thirds of both branches of the general court, by a vote taken by yeas and nays, vote that the
124 restrictions shall be released for the public good.

125 SECTION 11. Said section 32 of said chapter 184, as so appearing, is hereby further amended by
126 striking out the seventh paragraph and inserting in place thereof the following paragraph: —

127 Nothing in this section shall prohibit the department of telecommunications and energy, without
128 the need for approval of the general court or of the state authority which approves any affected
129 restriction, from authorizing the taking of easements for the purpose of utility services, or the
130 granting of exemptions from any affected restrictions with respect to such easements, provided
131 that: (a) said department shall require the minimum practicable interference with farming
132 operations or other purposes of the affected restriction with determination to be made after a
133 public hearing, which, in the event a public hearing concerning the same land is being or will be
134 conducted under chapter 164, section 75C, shall be consolidated with such hearing, and of which
135 all holders of the affected restriction have been given reasonable prior written notice; (b) the
136 applicant has obtained, or subsequently shall obtain, all necessary licenses, permits, approvals
137 and other authorizations from the appropriate state agencies; and (c) whether said department
138 proceeds by authorizing a taking or granting an exemption, the applicant shall, under chapter 79,
139 compensate the owner of the property and each restriction holder to the extent each interest may
140 warrant.

141 SECTION 12. Sections 1 and 2 of this act shall not apply to agricultural preservation restrictions
142 that exist prior to the date of enactment of this act. Sections 3 through 12 of this act shall apply
143 to all restrictions authorized under sections 31 and 32 of chapter 184 of the General Laws that
144 exist on the effective date of this act.