

HOUSE No. 775

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act amending the conservation restrictions and agricultural preservation 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. The commissioner of the department of agricultural resources may issue a
10 letter of intent requesting the assistance of a non-profit organization as defined in subsection
11 (c)(3) of section 501 of the United States Internal Revenue Code, in acquiring rights to certain
12 agricultural land. If the organization acquires the rights, it may sell them to the commissioner
13 based on a purchase agreement.

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

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

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

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

33 SECTION 6. Section 31 of chapter 184 of the General Laws, as appearing in the 2002
34 Official Edition, is hereby amended by deleting from the first sentence in the first paragraph the

35 words "either in perpetuity or for a specified number of years" and by inserting at the end of said
36 paragraph the following sentence:

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

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

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

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

46 An agricultural preservation restriction means a right, whether or not stated in the form of
47 a restriction, easement, covenant or condition, in any deed, will or other instrument executed by
48 or on behalf of the owner of the land appropriate to retaining land or water areas predominantly
49 in their agricultural forming or forest use, to forbid or limit any or all acts or uses detrimental to
50 such retention of the land for agricultural use. Such agricultural preservation restrictions shall be
51 in perpetuity and shall only be released as provided in section 32 of Chapter 184.

52 SECTION 9. Said section 31 of said chapter 184, as so appearing, is hereby further
53 amended by striking out the first two sentences of the fourth paragraph and replacing them with
54 the following two sentences:-

55 A watershed preservation restriction means a right, whether or not stated in the form of a
56 restriction, easement, covenant or condition, in any deed, will or other instrument executed by or
57 on behalf of the owner of the land appropriate to retaining land predominantly in such condition
58 to protect the water supply or potential water supply of the commonwealth, to forbid or limit any
59 or all acts or uses detrimental to such watershed. Such watershed preservation restrictions shall
60 be in perpetuity and shall only be released as provided in section 32 of Chapter 184.

61 SECTION 10. The first paragraph of section 32 of chapter 184 of the General Laws, as
62 appearing in the 2002 Official Edition, is hereby amended by adding the following sentence:—
63 The common law doctrine of merger shall not apply to any restrictions approved as provided in
64 this paragraph.

65 SECTION 11. Said section 32 of said chapter 184, as so appearing, is hereby further
66 amended by striking out the second and third paragraphs and inserting in place thereof the
67 following 2 paragraphs:— Conservation, preservation, agricultural preservation,
68 watershed preservation and affordable housing restrictions are interests in land, and may be
69 acquired by any governmental body or charitable corporations and trusts which have power to
70 acquire interests in land, in the same manner as it may acquire other interests in land. The
71 conservation, preservation, agricultural preservation, watershed preservation and affordable
72 housing restrictions may be enforced by injunction or other proceeding and shall entitle
73 representatives of the holder to enter the land in a reasonable manner and at reasonable times to
74 assure compliance. Restrictions may be released, in whole or in part, by the holder for
75 consideration, if any, as the holder may determine, in the same manner as the holder may dispose
76 of land or other interests in land, but only after a public hearing upon reasonable public notice,
77 by the governmental body holding the restriction, or, if held by a charitable corporation or trust,

78 by the mayor, or in cities having a city manager, the city manager, the city council of the city or
79 the selectmen of the town, whose approval shall be required, and in the case of a restriction
80 requiring approval by the secretary of environmental affairs, the Massachusetts historical
81 commission, the commissioner of agricultural resources, the director of urban parks in the
82 department of conservation and recreation, or the director of the department of housing and
83 community development, only with like approval of the release. Conservation, agricultural
84 preservation and watershed preservation restrictions, in addition to other requirements of this
85 section, may be released, in whole or in part, only with approval of two-thirds of both branches
86 of the general court, by a vote taken by the yeas and nays, that the restriction shall be released for
87 the public good.

88 No restriction that has been purchased with state funds or which has been granted in
89 consideration of a loan or grant made with state funds shall be released unless it is repurchased
90 by the land owner at its then current fair market value. Funds so received shall revert to the fund
91 sources from which the original purchase, loan or grant was made, or, lacking such sources, shall
92 be made available to acquire similar interests in other land. Agricultural preservation restrictions
93 shall be released by the holder only if the land is no longer considered suitable for agricultural or
94 horticultural purposes and unless two-thirds of both branches of the general court, by a vote
95 taken by yeas and nays, vote that the restrictions shall be released for the public good. Watershed
96 preservation restrictions shall be released by the holder only if the land is deemed by the
97 commissioner of conservation and recreation and the secretary of environmental affairs to no
98 longer be of any importance to the water supply or potential water supply of the commonwealth
99 and unless two-thirds of both branches of the general court, by a vote taken by yeas and nays,
100 vote that the restrictions shall be released for the public good.

101 SECTION 12. Said section 32 of said chapter 184, as so appearing, is hereby further
102 amended by striking out the seventh paragraph and inserting in place thereof the following
103 paragraph: —

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

118 SECTION 13. Sections 3 through 12 of this act shall apply to all restrictions authorized
119 under sections 31 and 32 of chapter 184 of the General Laws that exist on the effective date of
120 this act.