

SENATE No. 382

The Commonwealth of Massachusetts

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

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

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

32 SECTION 5. Said section 5B of said chapter 79, as so appearing, is hereby further
33 amended by inserting in the first sentence, following the words "as so defined," the following: —
34 "or not so 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
36 Official Edition, is hereby amended by deleting from the first sentence in the first paragraph the
37 words "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
40 and shall 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
42 amended by 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
44 and shall 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
46 amended by striking out the first two sentences of the fourth paragraph and replacing them with
47 the following 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
55 appearing in the 2002 Official Edition, is hereby amended by adding at the end the following

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

58 SECTION 10. Said section 32 of said chapter 184, as so appearing, is hereby further
59 amended by striking out the second and third paragraphs and inserting in place thereof the
60 following 2 paragraphs:— Conservation, preservation, agricultural preservation,
61 watershed preservation and affordable housing restrictions are interests in land, and may be
62 acquired by any governmental body or charitable corporations and trusts which have power to
63 acquire interests in land, in the same manner as it may acquire other interests in land. The
64 conservation, preservation, watershed preservation and affordable housing restrictions may be
65 enforced by injunction or other proceeding and shall entitle representatives of the holder to enter
66 the land in a reasonable manner and at reasonable times to assure compliance. An action
67 enforcing a conservation, preservation, watershed preservation, or affordable housing restriction
68 may be brought by: 1) an owner of an interest in the real property burdened by the restriction; 2)
69 a holder of the restriction; 3) a governmental body or charitable corporation or trust having a
70 third-party right of enforcement; or 4) a government body authorized by other law. If the court
71 in any judicial enforcement proceeding, or the decision maker in any arbitration or other
72 alternative dispute resolution enforcement proceeding, finds there has been a violation of any
73 such restriction or of any other restriction described in section 26 (C) of this chapter then, in
74 addition to any other relief ordered, the petitioner bringing such action or proceeding shall be
75 awarded reasonable attorneys' fees and costs incurred in such action or proceeding. Restrictions
76 may be amended by agreement between the holder and the landowner , provided that such
77 amendment is consistent with the purpose(s) of the original restriction; provided, that in the case
78 of a restriction held by a governmental body, amendments shall be approved by the secretary of

79 environmental affairs if a conservation restriction, the director of the division of water supply
80 protection in the department of conservation and recreation if a watershed preservation
81 restriction, the commissioner of agricultural resources if an agricultural preservation restriction,
82 the Massachusetts historical commission if a preservation restriction or the director of the
83 department of housing and community development if an affordable housing restriction;
84 provided further, that in the case of a restriction held by a charitable corporation or trust,
85 amendments shall be approved by the mayor, or in cities having a city manager the city manager,
86 and the city council of the city, or selectman or town meeting of the town in which the land is
87 situated, and the secretary of environmental affairs if a conservation restriction, the director of
88 the division of water supply protection in the department of conservation and recreation if a
89 watershed preservation restriction, the commissioner of agricultural resources if an agricultural
90 preservation restriction, the Massachusetts historical commission if a preservation restriction or
91 the director of the department of housing and community development if an affordable housing
92 restriction. Restrictions may be released, in whole or in part, by the holder for consideration, if
93 any, as the holder may determine, in the same manner as the holder may dispose of land or other
94 interests in land, but only after a public hearing upon reasonable public notice, by the
95 governmental body holding the restriction, or, if held by a charitable corporation or trust, by the
96 mayor, or in cities having a city manager, the city manager, the city council of the city or the
97 selectmen of the town, whose approval shall be required, and in the case of a restriction requiring
98 approval by the secretary of environmental affairs, the Massachusetts historical commission, the
99 commissioner of agricultural resources, the director of the division of water supply protection in
100 the department of conservation and recreation, or the director of the department of housing and
101 community development, only with like approval of the release. Conservation, agricultural

102 preservation and watershed preservation restrictions, in addition to other requirements of this
103 section, may be released, in whole or in part, only with approval of two-thirds of both branches
104 of the general court, by a vote taken by the yeas and nays, that the restriction shall be released for
105 the public good.

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

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

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

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