

# HOUSE . . . . . No. 3744

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court  
(2017-2018)  
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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 22 of the General Laws, as appearing in the 2012 Official Edition,  
2 is hereby amended by adding the following paragraph:-

3           A landowner who is subject to a non-development covenant under this section and who  
4 seeks to terminate the non-development covenant and instead seeks payment under section 23 for  
5 an agricultural preservation restriction shall reimburse the department for any compensation  
6 provided under the non-development covenant on a pro-rata basis according to a schedule  
7 established by the department prior to or simultaneous with the granting of the agricultural  
8 preservation restriction.

9           SECTION 2. Chapter 20 of the General Laws is hereby amended by striking out section  
10 23 and inserting in place thereof the following section:—

11           Section 23. (a) The secretary of energy and environmental affairs shall establish a  
12 program to assist the commonwealth in the acquisition of agricultural preservation restrictions as  
13 defined in section 31 of chapter 184, for land actively devoted to agricultural or horticultural uses

as defined in sections 1 to 5, inclusive, of chapter 61A. The commissioner of agricultural resources, subject to the approval of the secretary, shall establish procedures for management of the program.

The commissioner may, from funds appropriated to carry out this section or received from other sources, pay any agricultural landowner for a project submitted or approved by a city or town and approved by the agricultural lands preservation committee established by section 24 the amount determined by the committee to be equitable in consideration of anticipated benefits from the project, but not to exceed the difference between the fair market value of the land without an agricultural restriction and the fair market value of the land with an agricultural restriction. Payments made to acquire agricultural preservation restrictions may, upon the election of the person conveying such restriction, be made in installment payments spanning not more than 5 years.

Title to agricultural preservation restrictions shall be held in the name of the commonwealth, provided, however, that: (i) a city or town in which the land is located that provides assistance satisfactory to the agricultural lands preservation committee, including but not limited to providing funds or portions thereof toward the purchase of the restriction and providing legal services, shall hold title to the land jointly with the commonwealth, and (ii) a charitable corporation, charitable trust, or land bank, exempt under 26 U.S.C. section 501(c)(3), that provides assistance satisfactory to the agricultural lands preservation committee, including but not limited to providing funds or portions thereof toward the purchase of the restriction and providing legal services, may hold title jointly with the commonwealth.

35           The commissioner and the corporation, trust, or land bank may enter into a memorandum  
36 of understanding that provides for the corporation, trust, or land bank to acquire an agricultural  
37 preservation restriction in agricultural land which interest in the restriction may thereafter be sold  
38 to the commonwealth.

39                   (b) The commissioner of agricultural resources, with the approval of the co-  
40 holder, if any, may grant to any landowner subject to an agricultural preservation restriction held  
41 by the commonwealth a nonassignable special permit allowing nonagricultural activities  
42 including the placement of alternative energy-generating facilities on the restricted land in  
43 accordance with a detailed plan approved by the commissioner; provided, however, that: (1) the  
44 land is being actively utilized for full-time commercial agriculture; (2) the duration of the permit  
45 is for a maximum of 15 years, which may, at the discretion of the department, be renewed for  
46 successive 5-year periods; and (3) the agricultural lands preservation committee finds that the  
47 grant of a special permit will not defeat or derogate from the intent and purposes of retaining the  
48 land for agricultural use and preserving the natural agricultural resources of the commonwealth  
49 and that the landowner meets all requirements pertaining to special permits contained in the  
50 agricultural preservation restriction agreement form utilized by the commonwealth at the time of  
51 application for the special permit. It shall be a condition of a special permit that the primary use  
52 of the restricted parcel and the structures thereon, and the primary source of revenue derived  
53 therefrom, shall at all times be commercial agriculture.

54           The commissioner of agricultural resources may promulgate rules and regulations  
55 governing alternative energy-generating facilities on land subject to an agricultural preservation  
56 restriction to assure the placement, construction, and operation do not defeat or derogate from the  
57 intent of this section, which is to keep land or water areas predominately in their agricultural

farming or forest use. The regulations may require mitigation payments to the Agricultural Preservation Trust Fund, established by section 2CCCC of chapter 29, and may allow for prescription or approval of the commercial relationships required to own or operate such facilities.

SECTION 3. Section 24 of said chapter 20, as appearing in the 2012 Official Edition, is hereby amended by adding the following subsection:-

(e) There shall be a land use technical advisory committee. The advisory committee may recommend rules and regulations for landowners subject to an agricultural preservation restriction concerning practices that defeat or derogate from the intent of this section, which is to keep land or water areas predominately in their agricultural farming or forest use.

The commissioner may grant an exemption for a landowner who demonstrates that (i) those rules or regulations or both negatively impact the landowner's ability to maintain a profitable farming operation and (ii) the exemption will not defeat or derogate from the intent of this section. The advisory committee shall review a request for an exemption and make recommendations to the commissioner prior to the commissioner's determination on the exemption.

The advisory committee shall consist of 5 members: (1) a representative of the Natural Resources Conservation Service with the United States Department of Agriculture, appointed by the Massachusetts director of the National Resource Conservation Service; (2) a representative of the center for agriculture at University of Massachusetts at Amherst appointed by the dean of the college of natural sciences; (3) a representative of the Massachusetts Farm Bureau Federation, Inc., appointed by its board of directors; (4) a representative of a land preservation organization

operating within the commonwealth appointed by the agricultural lands preservation committee;  
and (5) a member of the agricultural land preservation committee, appointed by the  
commissioner, who shall chair the advisory committee.

SECTION 4. Chapter 29 of the General Laws is hereby amended by inserting after  
section 2BBBB the following section:--

Section 2CCCC. (b) There shall be established and set upon the books of the  
commonwealth a separate fund to be administered by the commissioner of agricultural resources,  
as trustee, to be known as the Agricultural Preservation Trust Fund. There shall be credited to  
the fund any revenue from appropriations or other monies authorized by the general court and  
specifically designated to be credited to the fund, any appropriation or grant explicitly made to  
the fund and any income derived from the investment of amounts credited to the fund. The funds  
deposited in this account shall be expended in accordance with the purposes of the agricultural  
preservation, restriction that caused such funds to be deposited into the account.

No expenditure from the fund shall cause the fund to be in deficiency at the close of a  
fiscal year. Monies deposited in the fund that are unexpended at the end of the fiscal year shall  
not revert to the General Fund and shall be available for expenditure in the subsequent fiscal  
year.

SECTION 5. Chapter 79 of the General Laws is hereby amended by striking out section  
5A and inserting in place thereof the following section:--

Section 5A. No historical or archeological landmark certified under section 27 of chapter  
9, no property owned, preserved and maintained by any historical organization or society as an  
ancient landmark or as property of historical or antiquarian interest, and no property protected by

102 a preservation restriction under sections 31 to 33, inclusive, of chapter 184 shall be taken without  
103 a special law authorizing the taking.

104 SECTION 6. Section 5B of said chapter 79 is hereby amended by striking out the first  
105 sentence, as appearing in the 2012 Official Edition, and inserting in place thereof the following  
106 sentence:-- No property used for agriculture or farming as defined in section 1A of chapter 128  
107 and no property protected by a conservation restriction, preservation restriction, agricultural  
108 preservation restriction, or watershed preservation restriction under sections 31 to 33, inclusive,  
109 of chapter 184 shall be taken without the consent of the owner thereof, nor shall an easement be  
110 taken on such property without such consent, except after a hearing by the board at which such  
111 owner shall be entitled to be heard and allowed to introduce evidence that other land not used for  
112 agriculture or farming, as so defined, or not so protected under sections 31 to 33, inclusive, of  
113 chapter 184, and without occupied buildings situated thereon is available for the public use for  
114 which it is intended to take his property.

115 SECTION 7. Section 31 of chapter 184 of the General Laws, as appearing in the 2012  
116 Official Edition, is hereby amended by striking out, in lines 1 to 2, inclusive, the words ", either  
117 in perpetuity or for a specified number of years."

118 SECTION 8. The first paragraph of said section 31 of said chapter 184, as so appearing,  
119 is hereby amended by adding the following sentence:- A conservation restriction shall be in  
120 perpetuity or for a specified number of years and shall only be released as provided in section 32.

121 SECTION 9. The second paragraph of said section 31 of said chapter 184, as so  
122 appearing, is hereby amended by adding the following sentence: — A preservation restriction

123 shall be in perpetuity or for a specified number of years and shall only be released as provided in  
124 section 32.

125           SECTION 10. The third paragraph of said section 31 of said chapter 184, as so appearing,  
126 is hereby further amended by striking out the first two sentences and inserting in place thereof  
127 the following two sentences: — An agricultural preservation restriction means a right, whether  
128 or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or  
129 other instrument executed by or on behalf of the landowner appropriate: (a) to retain land or  
130 water areas predominantly in their agricultural farming or forest use, and/or (b) to forbid or limit  
131 any construction or placing of buildings, except for those used for agricultural purposes or for  
132 dwellings used for family living by the landowner, his immediate family or employees or all acts  
133 or uses detrimental to such retention of the land in agricultural use. An agricultural preservation  
134 restriction shall be in perpetuity and shall only be released as provided in section 32.

135           SECTION 11. The fourth paragraph of said section 31 of said chapter 184, as so  
136 appearing, is hereby further amended by striking out the first 2 sentences and inserting in place  
137 thereof the following 2 sentences:- A watershed preservation restriction means a right, whether  
138 or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or  
139 other instrument executed by or on behalf of the landowner appropriate: (a) to retain land  
140 predominantly in a condition to protect the water supply or potential water supply of the  
141 commonwealth, and (b) to forbid or limit any or all acts or uses detrimental to the watershed. A  
142 watershed preservation restriction shall be in perpetuity and shall only be released as provided in  
143 section 32.

SECTION 12. The first paragraph of section 32 of chapter 184, as so appearing, is hereby amended by striking, in line 4, the words “or water” and inserting in place thereof the following words:-- , water, or recreation.

SECTION 13. Said first paragraph of said section 32 of said chapter 184, as so appearing, is hereby further amended by adding the following 2 sentences:— The common law doctrine of merger shall not apply to any restrictions approved as provided in this paragraph; notwithstanding this provision, restrictions shall be held or co-held by eligible third parties other than the owner. Notwithstanding clause (a) of section 27, grantees shall be deemed to be benefitted by and shall have standing to enforce restrictions under this paragraph.

SECTION 14. Said section 32 of said chapter 184, as so appearing, is hereby further amended by striking out the second and third paragraphs and inserting in place thereof the following 6 paragraphs:—

Conservation, preservation, agricultural preservation, watershed preservation and affordable housing restrictions are interests in land, and may be acquired by any governmental body or charitable corporation or trust that has power to acquire interest in land for the purposes of the restriction, in the same manner as it may acquire other interests in land. A conservation, preservation, agricultural preservation, watershed preservation or affordable housing restriction may be enforced by injunction or other proceeding and shall entitle the holder and representatives of the holder to enter the land in a reasonable manner and at reasonable times to assure compliance.

A restriction may be released in whole or in part, including by amendment allowing a previously prohibited act or use, or an act or use that was not previously reserved or allowed, by



166 the holder for consideration, if any, as the holder may determine, in the same manner as the  
167 holder may dispose of land or other interests in land, but only after the holder or co-holders has  
168 determined that it is no longer suitable for the purposes of the restriction and after a public  
169 hearing upon reasonable public notice, by the governmental body holding the restriction, or, if  
170 held by a charitable corporation or trust, by the mayor, or in cities having a city manager, the city  
171 manager, the city council of the city or the selectmen of the town, whose approval shall be  
172 required, and in the case of a restriction requiring approval by the secretary of energy and  
173 environmental affairs, the Massachusetts historical commission, the commissioner of agricultural  
174 resources, the director of urban parks in the department of conservation and recreation, or the  
175 director of the department of housing and community development, only with like approval of  
176 the release.

177 Conservation, agricultural preservation and watershed preservation restrictions, in  
178 addition to other requirements of this section, shall not be released, in whole or in part, except by  
179 laws enacted by a two-thirds vote, taken by yeas and nays, of each branch of the general court.

180 No restriction that has been purchased with state funds or which has been granted in  
181 consideration of a loan or grant made with state funds shall be released unless it is repurchased  
182 by the landowner at its then current fair market value. Funds so received shall revert to the fund  
183 sources from which the original purchase, loan or grant was made, or, lacking such sources, shall  
184 be made available to acquire similar interests in other land for similar purposes.

185 Conservation restrictions shall be released only if the secretary of energy and  
186 environmental affairs determines that the land is no longer suitable for the purposes of the  
187 restriction. Agricultural preservation restrictions shall be released by the holder only if the

agricultural lands preservation committee, established by section 24 of chapter 20, and the commissioner of agricultural resources determine that the land is no longer suitable for agricultural or horticultural purposes. Watershed preservation restrictions shall be released by the holder only if the commissioner of conservation and recreation and the secretary of energy and environmental affairs determine that the land is no longer of any importance to the water supply or potential water supply of the commonwealth.

If property has been acquired with state funds or with funds appropriated under chapter 44B or in consideration of a loan or grant made with state funds or with funds appropriated under chapter 44B and, as a condition of the acquisition, the property requires a restriction under this chapter, the restriction shall be considered the completion of the acquisition and shall not be considered a disposition as that term is used in Article 97 of the Amendments to the Constitution; and, therefore, the restriction, despite the passage of time, shall not subject to the requirement of a two-thirds vote, by yeas and nays, of each branch of the general court.

SECTION 15. Said section 32 of said chapter 184, as so appearing, is hereby further amended by striking out the seventh paragraph and inserting in place thereof the following paragraph: —

Nothing in this section shall prohibit the department of telecommunications and energy from authorizing the taking of easements for the purpose of utility services, or the granting of exemptions from any affected restrictions with respect to those easements, provided that: (a) the department shall require the minimum practicable interference with farming operations or other purposes of the affected restriction; (b) the applicant has obtained, or subsequently shall obtain, all necessary licenses, permits, approvals and other authorizations from the appropriate state

210 agencies; and (c) whether said department proceeds by authorizing a taking or granting an  
211 exemption, the applicant shall, under chapter 79, compensate the landowner and each restriction  
212 holder to the extent each interest may warrant. The department shall determine the minimum  
213 practicable interference after a public hearing. All holders of the affected restriction shall be  
214 given reasonable, prior written notice of the public hearing. If the land is also subject to a public  
215 hearing under section 75 of chapter 164, the public hearing required under this paragraph shall be  
216 consolidated with that public hearing.

217         SECTION 16. Section 33 of chapter 184, as so appearing, is amended by inserting, in  
218 line 1, after the word “town” the following words:- or holder of a restriction under sections 31  
219 and 32.

220         SECTION 17. Said section 33 of said chapter 184, as so appearing, is hereby further  
221 amended by inserting, in line 25, after the word “body” the following words:- or holder of a  
222 restriction under sections 31 and 32.

223         SECTION 18. Sections 1-17 of this act shall apply to all restrictions authorized under  
224 sections 31 and 32 of chapter 184 of the General Laws that exist on the effective date of this act.