

SENATE No. 2233

Text of amendment (Senator Tarr) to the Senate Bill making appropriations for the fiscal year 2020 for the maintenance of the departments, boards, commissions, institutions and certain activities of the commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (Senate, No. 3).

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

1 by inserting after section _ the following section:-

2 "SECTION _. Section 6F of chapter 62 of the General Laws, as appearing in the 2016
3 Official Edition, is hereby amended by inserting after the word "under," in line 52, the following
4 words:- subsections (a) or (c) of.

5 SECTION _. Section 5 of chapter 65C, as so appearing, is hereby amended by striking
6 out subsection (c) and inserting in place thereof the following subsections:-

7 (c) If the gross estate of a decedent, dying on or before December 31, 2018, includes real
8 property devoted to use as a farm for farming purposes, the estate may elect to value such
9 property in accordance with section 2032A of the Code, in effect on January 1, 1985. If a federal
10 return is required to be filed, such election shall be consistent with the election made for federal
11 estate tax purposes. All the substantive and procedural provisions of said section 2032A shall,
12 insofar as pertinent and consistent, apply to such election. The commissioner shall promulgate
13 regulations to carry out the provisions of this subsection.

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

"Applicable date", the date upon which the 10 year period that the estate shall be liable for assessment under paragraph (4) of this subsection begins. For qualifying agricultural land and associated land, the applicable date shall be the date of death of the decedent. For qualifying non-committed land, the applicable date shall be 2 years from the date of death of the decedent.

"Associated land", land under the same ownership as and contiguous to qualifying agricultural land and which, as of the date of death of the decedent, is not committed to residential, industrial or commercial use. Land shall be deemed contiguous if it is separated from other land under the same ownership only by a public or private way or waterway. Land under the same ownership shall be deemed contiguous if it is connected to other land under the same ownership by an easement for water supply. Any such land in excess of 100 per cent of the acreage of qualifying agricultural land shall be deemed qualifying non-committed land.

"Closely held agricultural land", qualifying agricultural land, associated land and qualifying non-committed land for which an election is made under this subsection.

"Qualifying agricultural land", land which meets the definition of forest land under chapter 61, land actively devoted to agricultural, horticultural or agricultural and horticultural uses under chapter 61A or recreational land under chapter 61B that is also used for farming or agriculture, as defined in section 1A of chapter 128, and has been devoted to such use or uses for at least 2 of the tax years immediately preceding the death of the decedent; provided, however, that the land need not be classified by municipal assessors as forest land under chapter 61, land actively devoted to agricultural, horticultural or agricultural and horticultural uses under chapter

61A or recreational land under chapter 61B to qualify for valuation as closely held agricultural land under this subsection.

“Qualifying non-committed land”, land which is not qualifying agricultural land and is not committed to residential, industrial or commercial use, including associated land in excess of 100 per cent of the acreage of qualifying agricultural land.

“Savings”, the difference between the estate taxes paid as a result of an election made under this subsection and the estate taxes that would have otherwise been paid had the election not been made.

(2) If the gross estate of a decedent, dying on or after January 1, 2019, includes real property that is qualifying agricultural land, associated land or qualifying non-committed land, the estate may elect to value such property, or any portion thereof, as closely held agricultural land pursuant to the valuation set by the farmland valuation advisory commission established pursuant to section 11 of chapter 61A for the fiscal year of the most recent growing season. The value of closely held agricultural land as determined pursuant to such election shall only be for the purposes of computing the tax due under this chapter. Such election shall be subject to the provisions of paragraphs (3) through (6), inclusive, of this subsection.

(3) Unless the property is restricted by a non-development covenant that: (i) is approved by the commissioner of agriculture, (ii) is for the purposes of maintaining the land in agricultural use, (iii) precludes non-agricultural development of the land, (iv) is recorded at the registry of deeds in the counties or districts in which the property is located and (v) does not expire within 10 years of the applicable date, the commissioner shall forthwith cause to be recorded in the registry of deeds of the counties or districts in which the property is situated a statement which

shall constitute a lien upon the land covered by election under this subsection. The statement shall include the owner or owners of record, the savings as a result of such election, the fair market value of the property and a description of the land adequate for identification. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. Upon application by any record owner, such liens shall be released by the commissioner with respect to any property upon the facts being established by their records or by affidavits or otherwise that all assessments have been paid, or it being more than 10 years past the applicable date, no assessment being due. All recording fees paid under this subsection whether for statements of liens, certificates, releases or otherwise shall be borne by the owner of record of the land.

Property restricted by an agricultural preservation restriction as defined by section 31 of chapter 184 and signed by the commissioner of agriculture shall be deemed to be restricted by a non-development covenant that (i) is approved by the commissioner of agriculture, (ii) is for the purposes of maintaining the land in agricultural use, (iii) precludes non-agricultural development of the land, (iv) is recorded at the registry of deeds in the counties or districts in which the property is located and (v) does not expire within 10 years of the applicable date.

(4)(i) When land valued as closely held agricultural land under this subsection, within a period of 10 years from the applicable date, is sold for other use or no longer qualifies as closely held agricultural land, the owner or owners shall immediately notify the commissioner of such sale or change of use and an assessment shall be due the commonwealth. Such assessment shall be calculated with interest based on the date of sale for other use or based on the last date of use as closely held agricultural land as follows:

The assessment shall be equal to 100 per cent of the savings if such date is within 1 year of the applicable date; 90 per cent of the savings if such date is within 2 years, but more than 1 year, of the applicable date; 80 per cent of the savings if such date is within 3 years, but more than 2 years, of the applicable date; 70 per cent of the savings if such date is within 4 years, but more than 3 years, of the applicable date; 60 per cent of the savings if such date is within 5 years, but more than 4 years, of the applicable date; 50 per cent of the savings if such date is within 6 years, but more than 5 years, of the applicable date; 40 per cent of the savings if such date is within 7 years, but more than 6 years, of the applicable date; 30 per cent of the savings if such date is within 8 years, but more than 7 years, of the applicable date; 20 per cent of the savings if such date is within 9 years, but more than 8 years, of the applicable date; 10 per cent of the savings if such date is within 10 years, but more than 9 years, of the applicable date; and no assessment shall be due if such date is more than 10 years from the applicable date.

Such assessment shall also include interest calculated at a simple interest rate of 5 per cent per annum on the savings from the applicable date.

There shall be an additional assessment equal to 30 per cent of the savings if the date of sale for other use or the last date of use while qualified as closely held agricultural land occurs within 1 year of the applicable date; and 15 per cent of the savings if such date occurs within 2 years, but more than 1 year, of the applicable date.

(ii) If an election has been made with respect to qualifying non-committed land which, on the applicable date, fails to meet the definition of forest land under chapter 61, land actively devoted to agricultural, horticultural or agricultural and horticultural uses under chapter 61A or recreational land under chapter 61B that is also used for farming or agriculture, as defined in

section 1A of chapter 128, an assessment shall be due the commonwealth and payable by the owner or owners within 30 days of the applicable date; provided, however, that the land need not be classified by municipal assessors as forest land under chapter 61, land actively devoted to agricultural, horticultural or agricultural and horticultural uses under chapter 61A or recreational land under chapter 61B. Such assessment shall be equal to the sum of (A) 100 per cent of the savings; (B) interest calculated at a simple interest rate of 5 per cent per annum on the savings from the date of death of the decedent; and (C) an additional assessment equal to 30 per cent of the savings.

(iii) Notwithstanding this paragraph, there shall be no assessment if the land involved, or a lesser interest in the land, is acquired for a natural resource by the commonwealth or by a nonprofit conservation organization; provided, however, that if any portion of the land is sold or converted to commercial, residential or industrial use within 10 years after the applicable date by a nonprofit conservation organization, an assessment shall be imposed against the nonprofit conservation organization in the amount that would have been imposed at the time of acquisition of the subject parcel by the nonprofit conservation organization had the transaction been subject to an assessment or, in the case of qualifying non-committed land acquired by a nonprofit conservation organization before the applicable date, the amount that would have been imposed on the applicable date under clause (ii) of this paragraph.

(iv) In the case of sale for other use of closely held agricultural land, other than qualifying non-committed land sold for other use before the applicable date, assessments imposed by this subsection shall be due and payable by the grantor at the time of transfer of the property by deed or other instrument of conveyance. In the case of qualifying non-committed land sold for other use before the applicable date, assessments imposed by this subsection shall

125 be due and payable by the grantor on the applicable date. In the case of change to a non-
126 qualifying use, assessments imposed by this subsection shall be due and payable by the owner or
127 owners within 30 days of the of the last date of use as closely held agricultural land, regardless of
128 the date on which the commissioner was notified by said owner or owners of such change of use.

129 (v) An assessment shall be imposed on only that portion of land on which the use has
130 changed. If, by conveyance or other action of the owner thereof, a portion of land which is
131 valued as closely held agricultural land under this subsection is separated for other use, the land
132 so separated shall be subject to liability for assessment, interest and additional assessment under
133 this paragraph based on the proportion which the acreage of the land so separated bears to the
134 total acreage of land valued as closely held agricultural land under this subsection.

135 (5) All buildings located on land which is valued as closely held agricultural land under
136 this subsection and all land occupied by a dwelling or regularly used for family living shall not
137 be valued as provided under this subsection.

138 (6) The commissioner shall promulgate regulations to carry out the provisions of this
139 subsection.