

SENATE NO. 470

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
3 inserting in place thereof the following 3 sentences:— Title to agricultural preservation
4 restrictions shall be held in the name of the commonwealth, except that a city or town in which
5 the land is located, or a charitable corporation, charitable trust or land bank, which provides
6 assistance satisfactory to the agricultural lands preservation committee including, but not
7 limited to, providing funds or portions thereof toward the purchase of the restriction, the
8 providing of legal services or monitoring and enforcement of the preservation restriction, may
9 hold title to the land jointly with the commonwealth. In the case of such joint holding, the
10 restriction shall include a description of the rights and responsibilities of each joint holder with
11 respect to the agricultural preservation restriction. The commissioner of the department of
12 agricultural resources may issue a letter of intent requesting the assistance of a non-profit
13 organization as defined in subsection (c)(3) of section 501 of the United States Internal Revenue
14 Code, in acquiring rights to certain agricultural land. If the organization acquires the rights, it
15 may sell them to the commissioner based on a 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
20 the election of the person conveying such restriction, be made in approximately equal
21 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 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
25 through 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
29 no 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
47 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
50 or on behalf of the owner of the land appropriate to retaining land predominantly in such
51 condition to protect the water supply or potential water supply of the commonwealth, to forbid
52 or limit any or all acts or uses detrimental to such watershed. Such watershed preservation
53 restrictions shall be in perpetuity and shall only be released as provided in section 32 of Chapter
54 184.

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

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

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

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

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

103 recreation, or the director of the department of housing and community development, only with
104 like approval of the release. Conservation, agricultural preservation and watershed preservation
105 restrictions, in addition to other requirements of this section, may be released, in whole or in
106 part, only with approval of two-thirds of both branches of the general court, by a vote taken by
107 the yeas and nays, that the restriction shall be released for the public good.

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

126 SECTION 11. Said section 32 of said chapter 184, as so appearing, is hereby further amended
127 by striking out the seventh paragraph and inserting in place thereof the following paragraph: —
128 Nothing in this section shall prohibit the department of telecommunications and energy, without
129 the need for approval of the general court or of the state authority which approves any affected
130 restriction, from authorizing the taking of easements for the purpose of utility services, or the
131 granting of exemptions from any affected restrictions with respect to such easements, provided
132 that: (a) said department shall require the minimum practicable interference with farming
133 operations or other purposes of the affected restriction with determination to be made after a
134 public hearing, which, in the event a public hearing concerning the same land is being or will be
135 conducted under chapter 164, section 75C, shall be consolidated with such hearing, and of
136 which all holders of the affected restriction have been given reasonable prior written notice; (b)
137 the applicant has obtained, or subsequently shall obtain, all necessary licenses, permits,
138 approvals and other authorizations from the appropriate state agencies; and (c) whether said
139 department proceeds by authorizing a taking or granting an exemption, the applicant shall,
140 under chapter 79, compensate the owner of the property and each restriction holder to the extent
141 each interest may warrant.

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