

Chapter 310 of the Acts of 2008

AN ACT RELATIVE TO THE PRESERVATION OF DAIRY FARMS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to aid in the preservation of the dairy farming industry in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Chapter 20 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following 5 sections:-

Section 27. Notwithstanding any general or special law to the contrary, the department may offer farm viability technical assistance and implementation funding to an owner of land subject to an agricultural preservation restriction, as defined by section 31 of chapter 184 if such owner demonstrates, in the case of implementation funding, that: the implementation shall improve the economic viability of the farm; retain or create private sector jobs and tax revenue either directly or indirectly associated with a farm business; improve farm productivity and competitiveness; expand farm facilities as part of a modernization or business plan; support renewable energy or environmental remediation projects on farms; or expand and support markets and infrastructure to strengthen the farming industry. The department shall adopt regulations to carry out this section.

Section 28. (a) For the purposes of this section and section 29, the following words and phrases shall have the following meanings:-

“Agriculture”, farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer.

“Eligible borrower”, any farmer who is a resident of the commonwealth and is at least 18 years of age. A borrower who is otherwise eligible shall not be eligible if such borrower is party to a pending legal or administrative action, including a contested case proceeding, related to an alleged violation involving animal feeding or care as regulated by the department of agricultural resources, whether the pending action is brought by the department or the attorney general.

“Eligible project”, a project on a farm that will improve the economic viability of Massachusetts farms, retain or create private sector jobs, improve Massachusetts farm productivity and competitiveness, expand farm facilities as part of a modernization plan, support environmental projects on farms or expand and support markets and infrastructure to strengthen the farming industry.

“Farm”, a body of land devoted to agriculture.

“Farmer”, a person engaged in agriculture as herein defined, or on a farm, as an incident to or in conjunction with, such agricultural operations, including preparations for market, delivery to storage, or to market, or to carriers for transportation to market.

(b) There shall be a linked loan program established by the department for the purposes of making linked loans to eligible borrowers. The commissioner shall administer the program and may, in consultation with the secretary of administration and finance, promulgate rules and regulations governing loan applications and the use of program funds for eligible borrowers. In implementing the program, the commissioner shall utilize linked investments with farm credit institutions or linked deposits with other approved commercial bank agricultural lenders. The commissioner shall enter into agreements and place investments with approved lenders to carry out the purposes of the program. The term of the linked investment and linked loan shall be for a period of not more than 4 years. The commissioner shall have the discretion to determine the amount of the loan available to an eligible borrower but no linked loan shall exceed \$500,000. The total amount available for the linked loan program shall not exceed \$25,000,000 over the life of the program. The commissioner shall disseminate information regarding the linked loan program to eligible borrowers.

Section 29. There shall be established and set upon the books of the commonwealth a separate fund to be known as the Farm Capital Linked Loan Fund, consisting of revenues received under subsection (b) of section 28, including any interest or investment earnings on such monies and all other monies credited or transferred thereto from any other fund or source pursuant to law. Any unexpended balance in the fund at the end of the fiscal year shall not revert to the General Fund but shall remain available for expenditure in subsequent fiscal years. No expenditure made from the fund shall cause the fund to become deficient at any point during a fiscal year.

The fund shall be held and applied by the commissioner to make qualified linked loans pursuant to said subsection (b) of said section 28. The books and records of the Farm Preservation Linked Loan Fund shall be subject to an annual audit by the state auditor.

Section 30. (a) There shall be established a Massachusetts dairy promotion board which shall consist of 9 members: 1 of whom shall be the secretary of administration and finance or his designee; 1 of whom shall be the commissioner of the department of agricultural resources or his designee, who shall serve as chair; and 7 members to be appointed by the commissioner, 1 of whom shall be selected from a list of 3 individuals nominated by the Massachusetts Cooperative of Milk Producers Federation; 1 of whom shall be a Massachusetts producer dealer selected from a list of 3 individuals nominated by the New England Producer Handlers Association; 2 of whom shall be selected from a list of 5 individuals nominated by the Massachusetts Association of Dairy Farmers; 2 of whom shall be selected from a list of 5 individuals nominated by Agri-mark Cooperative; and 1 of whom shall be selected from a list of 3 individuals nominated by the Massachusetts Food Association. Each member shall serve a term of 3 years. Any person appointed to fill a vacancy shall be appointed in a like manner and shall serve for only the

unexpired term of such director. Any member shall be eligible for reappointment. A producer member who changes the geographic market into which the member sells milk or who ceases the production of milk in the commonwealth shall be considered to have vacated membership if the change or cessation continues in excess of 3 months. A majority of the members of the board shall constitute a quorum and the affirmative vote of at least a majority of members present at a meeting shall be required to transact business and carry out the purpose of the board. The members of the board shall serve without compensation, but each member shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties.

(b) The board shall develop programs and policies with the objective of increasing the consumption of Massachusetts dairy products. The programs and policies may include, but shall not be limited to, promotional activities such as paid advertising, sales promotion and publicity to advance the image and sales of, and demand for: Massachusetts dairy products generally; research activities including, but not limited to, studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products and other related efforts to expand demand for dairy products; and education which includes those activities intended to broaden the understanding of sound nutritional principles, including the role of milk and dairy products in a balanced diet.

(c) The board shall adopt rules, regulations or guidelines necessary to carry out this section, and may authorize the commissioner to administer any programs as determined by the board to carry out its purposes.

(d) The board shall assess a fee of 10 cents per hundredweight upon milk delivered by Massachusetts milk producers or such fee that is commensurate with the credit allowed for producer contributions to state qualified programs under the Dairy Production Stabilization Act of 1983, codified at 7 U.S.C. section 4504 (g) as amended. The fee shall be collected as follows: (1) a dealer who purchases milk directly from producers shall withhold from each Massachusetts milk producer a fee of 10 cents per hundredweight on all milk produced and shall forward that fee to the board not later than the last day of the month following the month in which the milk was produced; and (2) all producer dealers shall pay to the board a fee of 10 cents per hundredweight on all milk produced by the producer dealer not later than the last day of the month following the month in which the milk was produced. All monies collected pursuant to this subsection shall be deposited into the dairy promotion trust fund established by section 48A of chapter 10.

(e) The board may receive and expend funds from any source, public or private, to carry out the purposes of this section. The monies collected and deposited into the Dairy Promotion Trust Fund established under section 31 shall be controlled exclusively by the board subject to an annual spending plan that shall be approved by the secretary of administration and finance.

(f) The board shall keep books, records and accounts of all its activities, which shall be

open to inspection. The books and records of the board shall be subject to an annual audit by the state auditor. The state auditor shall present the results of the audit to the board, the commissioner, the state treasurer and the house and senate committees on ways and means. The board shall also prepare an annual report that shall include: a summary of all receipts and expenditures, including expenditures for specific promotional, educational or research programs; a description of the various promotional, educational or research programs operated, contracted or sponsored by the board; and a directory of current board members, including their affiliation and term of office thereof and shall provide a copy of the annual report to the house and senate committee on ways and means and the executive office of administration and finance.

Section 31. There shall be established and set upon the books of the commonwealth a separate fund to be known as the Dairy Promotion Trust Fund, consisting of revenues received pursuant to subsection (d) of section 30, including any interest or investment earnings on such monies and all other monies credited or transferred thereto from any other fund or source pursuant to law. Any unexpended balance in the fund at the end of the fiscal year shall not revert to the General Fund but shall remain available for expenditure in subsequent fiscal years. No expenditure made from the fund shall cause the fund to become deficient at any point during a fiscal year.

The dairy promotion board, established in subsection (a) of section 30, shall have exclusive authority to receive, deposit, invest and expend monies pursuant to section 30. The books and records of the Dairy Promotion Trust Fund shall be subject to an annual audit by the state auditor.

SECTION 2. Section 8A of chapter 59 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

The local appropriating authority, as defined in section 21C, may, by a two-thirds vote, seek voter approval to not impose the excise established by this section.

SECTION 3. Section 6 of chapter 62 of the General Laws, as most recently amended by section 17 of chapter 130 of the acts of 2008, is hereby amended by adding the following subsection:-

(o)(1) There shall be established a dairy farmer tax credit program under which a taxpayer who holds a certificate of registration as a dairy farmer pursuant to section 16A of chapter 94 may be allowed a refundable income tax credit based on the amount of milk produced and sold. The credit shall be claimed against the taxes due pursuant to chapter 62. The credit shall be established to offset the cyclical downturns in milk prices paid to dairy farmers and shall be based on the United States Federal Milk Marketing Order for the applicable market such that if the United States Federal Milk Marketing Order price drops below a trigger price anytime during the taxable year such taxpayer may receive the tax credit.

(2) The commissioner of agricultural resources, in consultation with the commissioner of revenue, shall adopt regulations for the implementation, administration and enforcement

of this subsection, including the establishment of the trigger price, which shall take into account the operating costs of milk production, including hired labor and some portion of the value of unpaid labor, and the amount of the tax credit which shall be based upon volume of milk production.

(3) The total cumulative value of the credits authorized pursuant to this section and section 38Z of chapter 63 shall not exceed \$4,000,000 annually.

(4) If the amount of the credit allowed hereunder exceeds the taxpayer's liability, the commissioner of revenue shall treat such excess as an overpayment and shall pay the taxpayer 90 per cent of the amount of such excess, without interest. The commissioner of agricultural resources shall certify to the department of revenue whether a dairy farmer claiming credits under this section has met the eligibility requirements provided in this subsection and the amount of credit to which any such eligible applicant is entitled.

SECTION 4. Section 6L of said chapter 62, inserted by section 5 of chapter 63 of the acts of 2007, is hereby amended by striking out subsections (a) and (b) and inserting in place thereof the following 2 subsections:-

(a) This section shall apply to credits earned under subsections (l) or (o) of section 6.

(b) At the written election of a taxpayer entitled to a credit under subsections (l) or (o) of section 6, the commissioner shall apply the credit against the liability of the taxpayer as determined on its return, at first reduced by any other available credits, and shall then refund to the taxpayer 90 per cent of the balance of the credits.

SECTION 5. Section 32E of chapter 63, as amended by section 54 of chapter 173 of the acts of 2008, is hereby amended by striking out subsections (a) and (b) and inserting in place thereof the following 2 subsections:-

(a) This section shall apply to credits earned under sections 38X or 38Z.

(b) At the written election of a taxpayer entitled to a credit under sections 38X or 38Z, the commissioner shall apply the credit against the liability of the taxpayer as determined on his return, as first reduced by any other available credits, and shall then refund to the taxpayer 90 per cent of the balance of credits.

SECTION 6. Said chapter 63 is hereby further amended by inserting after section 38Y, inserted by section 83 of chapter 173 of the acts of 2008, the following section:-

Section 38Z. (a) There shall be established a dairy farm tax credit program under which a domestic or foreign corporation that holds a certificate of registration as a dairy farm pursuant to section 16A of chapter 94 may be allowed a refundable income tax credit based on the amount of milk produced and sold. The credit may be claimed against the taxes due pursuant to this chapter. The credit shall be established to offset the cyclical downturns in milk prices paid to dairy farmers and shall be based on the United States

Federal Milk Marketing Order for the applicable market such that if the United States Federal Milk Marketing Order price drops below a trigger price anytime during the taxable year such domestic or foreign corporation may receive the tax credit.

(b) The commissioner of agricultural resources, in consultation with the commissioner of revenue, shall adopt regulations for the implementation, administration and enforcement of this section, including the establishment of the trigger price, which shall take into account the operating costs of milk production including hired labor and some portion of the value of unpaid labor, and the amount of the tax credit which shall be based upon volume of milk production.

(c) The total cumulative value of the tax credits authorized pursuant to this section and subsection (o) of section 6 of chapter 62 shall not exceed \$4,000,000 annually.

(d) If the amount of the credit allowed under this section exceeds the taxpayer's liability, the commissioner of revenue shall treat such excess as an overpayment and shall pay the taxpayer 90 per cent of the amount of such excess, without interest. The commissioner of agricultural resources shall certify to the department of revenue whether a dairy farm claiming credits under this section has met the eligibility requirements provided in this section and the amount of credit to which any such eligible applicant is entitled.

SECTION 7. Section 9 of chapter 90 of the General Laws as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 18, the word "two" and inserting in place thereof the following number:- 10.

SECTION 8. The first paragraph of subsection (d) of section 14 of chapter 94A of the General Laws, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- The provisions of this subsection and subsection (e) shall not prohibit the use of coupons, trading stamps or donations of milk exclusively for charitable purposes to any duly organized charitable corporation.

SECTION 9. Subsection (e) of said section 14 of said chapter 94A, as so appearing, is hereby further amended by inserting after the word "subsection", in line 91, the following words:- or subsection (f).

SECTION 10. Said section 14 of said chapter 94A, as so appearing, is hereby further amended by adding the following subsection:-

(f) Notwithstanding the provisions of this section to the contrary, the department is hereby authorized and directed to establish a program to allow for the use of discount coupons in promotional and marketing campaigns of milk and cream for consumer use and benefit. The commissioner shall promulgate regulations necessary to carry out the provisions of this subsection. Said regulations shall be promulgated no later than 180 days from the effective date of this act and shall include, but not be limited to, reasonable and appropriate mechanisms to protect dairy farms that directly market their own fluid milk or cream to the consumer and civil penalties for violation of said regulations,

including possible license suspension. The use of coupons in promotional or marketing campaigns shall be subject to the approval of the commissioner and shall not be predatory towards any Massachusetts dairy farmer who directly markets and sells their own fluid milk to the consumer. The use of coupons shall not result in the sale of milk at a price that is below the cost of production.

The commissioner is directed to annually study, analyze and assess the economic impact of this program on dairy farmers, producers, processors, consumers and the commonwealth's milk markets. The report shall be submitted to the joint committee on environment, natural resources and agriculture, the secretary of energy and environmental affairs and the secretary of housing and economic development on or before October 1, 2010 and annually for the proceeding 4 years.

SECTION 11. There shall be a commission consisting of 8 members: 1 of whom shall be the commissioner of the department of agricultural resources or his designee, who shall serve as chairman; 1 of whom shall be the commissioner of the department of environmental protection or designee; 1 of whom shall be the commissioner of the department of revenue or his designee; 1 of whom shall be the commissioner of the department of public health or his designee; and 4 of whom shall be appointed by the governor, 1 of whom shall be a representative from the Massachusetts technology collaborative, 1 of whom shall be a dairy farmer who is licensed as a producer dealer, 1 of whom shall be a dairy farmer who represents the Massachusetts association of dairy farmers and 1 of whom shall be a dairy farmer who represents the Massachusetts cooperative of milk producers federation. Each member shall serve for a term of 3 years. Any person appointed to fill a vacancy in the office of a member of the commission shall be appointed in a like manner and shall serve for only the unexpired term of the member who vacated. Members shall be eligible for reappointment. Any member may be removed by the governor for cause. Said commission shall meet quarterly or as need be if requested by 4 or more members of the commission.

The commission shall study and recommend options for updating farming technology including, but not limited to, ways to promote energy conservation, collaborative purchasing, purchasing and selling of energy, energy saving technology and alternative options for sustainability and growth. The commission shall, in the course of its study, analyze current regulations and statutes to ensure such regulations and statutes are not impediments to the adoption of farming technology.

The commission shall report to the governor and the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect by filing the same with the clerks of the house of representatives and the senate, who shall forward the same to the house and senate committees on ways and means and the joint committee on the environment, natural resources and agriculture on or before April 1, 2009, and annually thereafter.

SECTION 12. Notwithstanding any general or special law to the contrary, the initial terms of board members appointed pursuant to section 30 of chapter 20 of the General Laws shall be staggered as follows: the members nominated by Massachusetts Cooperative of Milk Producers Federation, the Massachusetts Food Association, and the New England Producer Handlers Association shall serve for a term of 3 years; 1 member each nominated by the Massachusetts Association of Dairy Farmers and Agri-mark Cooperative shall serve for a term of 3 years and the remaining members shall serve for a term of 1 year. The Massachusetts Association of Dairy Farmers and Agri-mark Cooperative shall designate, upon providing nominations for appointment, the member to serve for 1 year and the member to serve for 3 years.

The Governor disapproved Section 13 of this Chapter because he had already signed into law Section 11 of Chapter 306 that contained nearly the same language. Section 11 of Chapter 306 appears following the final section, Section 14, of this Chapter.

SECTION 13. Chapter 182 of the acts of 2008 is hereby amended by striking out section 89 and inserting in place thereof the following section:—

~~Section 89. (a) Notwithstanding any general or special law to the contrary, after complying with clause (a) of section 5C of chapter 29 of the General Laws the comptroller shall dispose of the consolidated net surplus in the budgetary funds for fiscal year 2008 as follows: (1) if the consolidated net surplus is \$25,000,000 or less, the comptroller shall transfer said amount to the Massachusetts Life Sciences Investment Fund established by section 6 of chapter 23I of the General Laws; or (2) if the consolidated net surplus is \$39,000,000 or greater, the comptroller shall transfer said amount as follows: (a) \$25,000,000 shall be transferred to said Massachusetts Life Sciences Investment Fund; (b) \$3,000,000 shall be transferred to the Workforce Competitiveness Trust Fund, established in section 2WWW of chapter 29; (c) \$2,000,000 shall be transferred to the Massachusetts Science, Technology, Engineering, and Mathematics Grant Fund established in section 2MMM of chapter 29; (d) \$4,000,000 shall be transferred to the Endowment Incentive Holding Fund established in section 7; provided, however, that \$2,000,000 from said Endowment Incentive Holding Fund shall be allocated to University of Massachusetts campuses; provided further, that \$1,000,000 from said Endowment Incentive Holding Fund shall be allocated to state college campuses; and provided further, that \$1,000,000 from said Endowment Incentive Holding Fund shall be allocated to community college campuses; (e) \$5,000,000 shall be transferred to the Farm Capital Linked Loan Fund established pursuant to section 29 of chapter 20 of the General Laws; and (f) any amount remaining after the transfers pursuant to clause (a) to (e), inclusive, shall be transferred to the Commonwealth Stabilization Fund established pursuant to section 2H of chapter 29 of the General Laws. If the amount remaining after the designations in said clause (a) of said section 5C of said chapter 29 of the General Laws is greater than \$25,000,000 but less than \$39,000,000, then after making the transfer required in clause (a), the comptroller shall proportionately reduce the transfers required in clauses (b), (c), (d) and (e); and provided further, that allocations~~

~~from the Endowment Incentive Holding Fund pursuant to clause (d) shall also be proportionately reduced.~~

~~(b) All transfers specified in this section shall be made from the undesignated fund balances in the budgetary funds proportionally from the undesignated fund balances, but no such transfer shall cause a deficit in any of the funds.~~

SECTION 14. The credits allowed under subsection (o) of section 6 of chapter 62 of the General Laws and section 38Z of chapter 63 of the General Laws shall be reviewed by the department of agricultural resources after the tax credit programs established in said subsection (o) of said chapter 63 and said section 38Z have been in place for 2 tax years.

Approved August 14 , 2008

Chapter 306 of the Acts of 2008

SECTION 11. Chapter 182 of the acts of 2008 is hereby amended by striking out section 89 and inserting in place thereof the following section:-

Section 89. (a) Notwithstanding any general or special law to the contrary, after complying with clause (a) of section 5C of chapter 29 of the General Laws the comptroller shall dispose of the consolidated net surplus in the budgetary funds for fiscal year 2008 as follows: (1) if the consolidated net surplus is \$25,000,000 or less, the comptroller shall transfer said amount to the Massachusetts Life Sciences Investment Fund established by section 6 of chapter 23I of the General Laws; or (2) if the consolidated net surplus is \$41,000,000 or greater, the comptroller shall transfer said amount as follows: (a) \$25,000,000 shall be transferred to said Massachusetts Life Sciences Investment Fund; (b) \$3,000,000 shall be transferred to the Workforce Competitiveness Trust Fund, established in section 2WWW of chapter 29 of the General Laws; (c) \$2,000,000 shall be transferred to the Massachusetts Science, Technology, Engineering, and Mathematics Grant Fund established in section 2MMM of said chapter 29, as so appearing; (d) \$4,000,000 shall be transferred to the Endowment Incentive Holding Fund established in section 7; provided, however, that \$2,000,000 from the Endowment Incentive Holding Fund shall be allocated to University of Massachusetts campuses; provided further, that \$1,000,000 from the Endowment Incentive Holding Fund shall be allocated to state college campuses; and provided further, that \$1,000,000 from said Endowment Incentive Holding Fund shall be allocated to community college campuses; (e) \$5,000,000 shall be transferred to the Farm Capital Linked Loan Fund established pursuant to section 29 of chapter 20 of the General Laws; (f) \$2,000,000 shall be transferred to the Rose Fitzgerald Kennedy Greenway Conservancy, Inc. for the purpose of operating, managing, improving and maintaining the Rose Fitzgerald Kennedy Greenway in the city of Boston; provided that upon any transfer made pursuant to this clause, the Massachusetts Turnpike Authority shall have no further obligation to pay any costs related to the operation, management, improvement or maintenance of the greenway and the other open space parcels; and (g) any amount remaining after the transfers pursuant to clause (a) to (f), inclusive, shall be transferred to the Commonwealth Stabilization Fund established pursuant to section 2H of chapter 29 of the General Laws. If the amount remaining after the designations in said clause (a) of said section 5C

of said chapter 29 of the General Laws is greater than \$25,000,000 but less than \$41,000,000, then after making the transfer required in clause (a) of this section, the comptroller shall proportionately reduce the transfers required in clauses (b) to (f), inclusive; and provided further, that allocations from the Endowment Incentive Holding Fund pursuant to clause (d) shall also be proportionately reduced.

(b) All transfers specified in this section shall be made from the undesignated fund balances in the budgetary funds proportionally from the undesignated fund balances, but no such transfer shall cause a deficit in any of the funds.

Chapter 306 was approved August 11, 2008