

HOUSE No. 03943

By Ms. Gobi of Spencer, for the committee on Environment, Natural Resources and Agriculture, on House, No. 1139, a Bill amending the conservation restrictions and agricultural preservation statutes (House, No. 3943). February 13, 2012.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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 2010 Official Edition, is
2 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 23 and
10 inserting in place thereof the following section:—

11 Section 23. (a) The secretary of energy and environmental affairs shall establish a program to
12 assist the commonwealth in the acquisition of agricultural preservation restrictions as defined in
13 section 31 of chapter 184, for land actively devoted to agricultural or horticultural uses as
14 defined in sections 1 to 5, inclusive, of chapter 61A. The commissioner of agricultural
15 resources, subject to the approval of the secretary, shall establish procedures for management of
16 the program.

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

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

33 not limited to providing funds or portions thereof toward the purchase of the restriction and
34 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 of
36 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 department of agricultural resources shall have exclusive authority to enforce the
40 provisions of any agricultural preservation restriction held exclusively or jointly by the
41 commonwealth, to enforce guidelines established and regulations promulgated under this section
42 or section 24, to conduct on-site inspections of the restricted land, and to exercise the
43 enforcement powers authorized by this section. In addition to any other remedies provided by
44 the restriction or applicable laws, the commissioner may issue enforcement orders to compel the
45 correction of any violation of the restriction. Any party aggrieved by an enforcement order may
46 appeal within 30 days to the agricultural lands preservation committee, which may, after notice
47 and hearing, uphold, amend, or cancel the enforcement order. The commissioner may issue
48 administrative fines of up to \$500 per violation for failure to comply with an enforcement order,
49 each day of failure to comply constituting a separate violation. The enforcement order may
50 require the person found to have violated the restriction to reimburse the commonwealth for the
51 direct and indirect costs and expenses of enforcement. The enforcement powers and any
52 adjudicatory proceedings commenced under this section shall be subject to the provisions of
53 chapter 30A.

54 If the commissioner determines that an enforcement order has not been complied with within 180
55 days, the commissioner or his agents may, after giving reasonable notice, enter upon the
56 restricted land and may take such appropriate action the commissioner deems necessary to
57 correct the violation. The landowner shall reimburse the commonwealth for the direct and
58 indirect costs of this action. Any monies received as reimbursement shall be deposited into the
59 Agricultural Preservation Trust Fund, established by section 2CCCC of chapter 29. The
60 commissioner of agricultural resources may promulgate regulations to effectuate the purposes of
61 this section.

62 (c) The commissioner of agricultural resources, with the approval of the co-holder, if any,
63 may grant to any landowner subject to an agricultural preservation restriction held by the
64 commonwealth a nonassignable special permit allowing nonagricultural activities including the
65 placement of alternative energy-generating facilities on the restricted land in accordance with a
66 detailed plan approved by the commissioner; provided, however, that: (1) the land is being
67 actively utilized for full-time commercial agriculture; (2) the duration of the permit is for a
68 maximum of 15 years, which may, at the discretion of the department, be renewed for successive
69 5-year periods; and (3) the agricultural lands preservation committee finds that the grant of a
70 special permit will not defeat or derogate from the intent and purposes of retaining the land for
71 agricultural use and preserving the natural agricultural resources of the commonwealth and that
72 the landowner meets all requirements pertaining to special permits contained in the agricultural
73 preservation restriction agreement form utilized by the commonwealth at the time of application
74 for the special permit. It shall be a condition of a special permit that the primary use of the
75 restricted parcel and the structures thereon, and the primary source of revenue derived therefrom,
76 shall at all times be commercial agriculture.

77 The commissioner of agricultural resources may promulgate rules and regulations governing
78 alternative energy-generating facilities on land subject to an agricultural preservation restriction
79 to assure the placement, construction, and operation do not defeat or derogate from the intent of
80 this section, which is to keep land or water areas predominately in their agricultural farming or
81 forest use. The regulations may require mitigation payments to the Agricultural Preservation
82 Trust Fund, established by section 2CCCC of chapter 29, and may allow for prescription or
83 approval of the commercial relationships required to own or operate such facilities.

84 SECTION 3. Section 24 of said chapter 20, as appearing in the 2010 Official Edition, is hereby
85 amended by adding the following subsection:-

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

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

95 The advisory committee shall consist of 5 members: (1) a representative of the Natural
96 Resources Conservation Service with the United States Department of Agriculture, appointed by
97 the Massachusetts director of the National Resource Conservation Service; (2) a representative of
98 the center for agriculture at University of Massachusetts at Amherst appointed by the dean of the

99 college of natural sciences; (3) a representative of the Massachusetts Farm Bureau Federation,
100 Inc., appointed by its board of directors; (4) a representative of a land preservation organization
101 operating within the commonwealth appointed by the agricultural lands preservation committee;
102 and (5) a member of the agricultural land preservation committee, appointed by the
103 commissioner, who shall chair the advisory committee.

104 SECTION 4. Chapter 29 of the General Laws is hereby amended by inserting after section
105 2BBBB the following section:--

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

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

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

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

121 landmark or as property of historical or antiquarian interest, and no property protected by a
122 preservation restriction under sections 31 to 33, inclusive, of chapter 184 shall be taken without a
123 special law authorizing the taking.

124 SECTION 6. Section 5B of said chapter 79 is hereby amended by striking out the first sentence,
125 as appearing in the 2010 Official Edition, and inserting in place thereof the following sentence:--
126 No property used for agriculture or farming as defined in section 1A of chapter 128 and no
127 property protected by a conservation restriction, preservation restriction, agricultural
128 preservation restriction, or watershed preservation restriction under sections 31 to 33, inclusive,
129 of chapter 184 shall be taken without the consent of the owner thereof, nor shall an easement be
130 taken on such property without such consent, except after a hearing by the board at which such
131 owner shall be entitled to be heard and allowed to introduce evidence that other land not used for
132 agriculture or farming, as so defined, or not so protected under sections 31 to 33, inclusive, of
133 chapter 184, and without occupied buildings situated thereon is available for the public use for
134 which it is intended to take his property.

135 SECTION 7. Section 31 of chapter 184 of the General Laws, as appearing in the 2010 Official
136 Edition, is hereby amended by striking out, in lines 1 to 2, inclusive, the words ", either in
137 perpetuity or for a specified number of years."

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

141 SECTION 9. The second paragraph of said section 31 of said chapter 184, as so appearing, is
142 hereby amended by adding the following sentence: — A preservation restriction shall be in
143 perpetuity or for a specified number of years and shall only be released as provided in section 32.

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

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

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

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

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

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

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

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

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

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

203 Conservation restrictions shall be released only if the secretary of energy and environmental
204 affairs determines that the land is no longer suitable for the purposes of the restriction.

205 Agricultural preservation restrictions shall be released by the holder only if the agricultural lands
206 preservation committee, established by section 24 of chapter 20, and the commissioner of

207 agricultural resources determine that the land is no longer suitable for agricultural or horticultural
208 purposes. Watershed preservation restrictions shall be released by the holder only if the
209 commissioner of conservation and recreation and the secretary of energy and environmental
210 affairs determine that the land is no longer of any importance to the water supply or potential
211 water supply of the commonwealth.

212 If property has been acquired with state funds or with funds appropriated under chapter 44B or in
213 consideration of a loan or grant made with state funds or with funds appropriated under chapter
214 44B and, as a condition of the acquisition, the property requires a restriction under this chapter,
215 the restriction shall be considered the completion of the acquisition and shall not be considered a
216 disposition as that term is used in Article 97 of the Amendments to the Constitution; and,
217 therefore, the restriction, despite the passage of time, shall not subject to the requirement of a
218 two-thirds vote, by yeas and nays, of each branch of the general court.

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

221 Nothing in this section shall prohibit the department of telecommunications and energy from
222 authorizing the taking of easements for the purpose of utility services, or the granting of
223 exemptions from any affected restrictions with respect to those easements, provided that: (a) the
224 department shall require the minimum practicable interference with farming operations or other
225 purposes of the affected restriction; (b) the applicant has obtained, or subsequently shall obtain,
226 all necessary licenses, permits, approvals and other authorizations from the appropriate state
227 agencies; and (c) whether said department proceeds by authorizing a taking or granting an
228 exemption, the applicant shall, under chapter 79, compensate the landowner and each restriction

229 holder to the extent each interest may warrant. The department shall determine the minimum
230 practicable interference after a public hearing. All holders of the affected restriction shall be
231 given reasonable, prior written notice of the public hearing. If the land is also subject to a public
232 hearing under section 75 of chapter 164, the public hearing required under this paragraph shall be
233 consolidated with that public hearing.

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

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

239 SECTION 18. Sections 1-17 of this act shall apply to all restrictions authorized under sections
240 31 and 32 of chapter 184 of the General Laws that exist on the effective date of this act.