

**SENATE. . . . . No. 2147**

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**The Commonwealth of Massachusetts**

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SENATE, November 18, 2003.

The committee on Ways and Means, to whom was committed the Senate Bill amending the conservation restrictions and agricultural preservation statutes (Senate, No. 1192), report recommending that the same ought to pass with an amendment, substituting a new draft with the same title (Senate, No. 2147).

For the committee,

**THERESE MURRAY.**

## The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

### 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 23 of chapter 20 of the General Laws, as  
2 appearing in section 62 of chapter 26 of the acts of 2003, is  
3 hereby amended by striking out the third sentence and inserting in  
4 place thereof the following 3 sentences:— Title to agricultural  
5 preservation restrictions shall be held in the name of the common-  
6 wealth, except that a city or town in which the land is located, or a  
7 charitable corporation, charitable trust or land bank, which pro-  
8 vides assistance satisfactory to the agricultural lands preservation  
9 committee including, but not limited to, providing funds or por-  
10 tions thereof toward the purchase of the restriction, the providing  
11 of legal services or monitoring and enforcement of the preserva-  
12 tion restriction, may hold title to the land jointly with the com-  
13 monwealth. The commissioner of the department of agricultural  
14 resources may issue a letter of intent requesting the assistance of a  
15 non-profit organization as defined in subsection (c)(3) of  
16 section 501 of the United States Internal Revenue Code, in  
17 acquiring rights to certain agricultural land. If the organization  
18 acquires the rights, it may sell them to the commissioner based on  
19 a purchase agreement.

1 SECTION 2. Said section 23 of said chapter 20, as so  
2 appearing, is hereby further amended by inserting, at the end of  
3 the first paragraph, the following sentence:— Notwithstanding  
4 any general or special law to the contrary, payments made to  
5 acquire agricultural preservation restrictions as defined in  
6 section 31 of chapter 184 and provided for in this chapter may,  
7 upon the election of the person conveying such restriction, be

8 made in approximately equal installment payments spanning not  
9 more than 5 years.

1 SECTION 3. Section 3 of chapter 40A of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 striking out the first paragraph and inserting in place thereof the  
4 following paragraph:—

5 No zoning ordinance or by-law shall regulate or restrict the use  
6 of materials or methods of construction of structures regulated by  
7 the state building code, nor shall any such ordinance or by-law  
8 prohibit, unreasonably regulate or require a special permit for the  
9 use of land for the primary purpose of commercial agriculture,  
10 aquaculture, silvaculture, horticulture, floriculture or viticulture;  
11 nor prohibit, unreasonably regulate, or require a special permit for  
12 the use, expansion, reconstruction or construction of structures  
13 thereon for the primary purpose of commercial agriculture, aqua-  
14 culture, silvaculture, horticulture, floriculture or viticulture,  
15 including those facilities for the sale of produce, wine and dairy  
16 products, if either: during the months of June, July, August and  
17 September of every year or during the harvest season of the pri-  
18 mary crop raised on land of the owner or lessee, 25 per cent of  
19 such products for sale, based on either gross sales dollars or  
20 volume, have been produced by the owner or lessee of the land on  
21 which the facility is located; or at least 25 per cent of such prod-  
22 ucts for sale, based on either gross annual sales or annual volume,  
23 have been produced by the owner or lessee of the land on which  
24 the facility is located, and at least an additional 25 per cent of  
25 such products for sale, based upon either gross annual sales or  
26 annual volume, have been produced in the commonwealth on  
27 land, other than that on which the facility is located, used for the  
28 primary purpose of commercial agriculture, aquaculture, silvacul-  
29 ture, horticulture, floriculture or viticulture, whether by the owner  
30 or lessee of the land on which the facility is located or by another;  
31 except that all such activities may be limited to parcels of 5 acres  
32 or more in areas not zoned for agriculture, aquaculture, silvacul-  
33 ture, horticulture, floriculture or viticulture. For such purposes,  
34 land divided by a public or private way or a waterway shall be  
35 construed as 1 parcel. No zoning ordinance or by-law shall  
36 exempt land or structures from flood plain or wetlands regulations

37 established pursuant to general law. For the purposes of this  
38 section, the term agriculture shall be as defined in section 1A of  
39 chapter 128, and the term “horticulture” shall include the growing  
40 and keeping of nursery stock and the sale thereof. Such nursery  
41 stock shall be considered to be produced by the owner or lessee of  
42 the land if it is nourished, maintained and managed while on the  
43 premises.

1 SECTION 4. Section 5A of chapter 79 of the General Laws, as  
2 appearing in the 2000 Official Edition, is hereby amended by  
3 inserting, following the words “or antiquarian interest” the  
4 following:— “, and no property protected by a preservation  
5 restriction under sections 31 through 33 of chapter 184”.

1 SECTION 5. Section 5B of said chapter 79, as so appearing, is  
2 hereby amended by inserting in the title, following the word  
3 “Agricultural”, the words “and Conservation”; and by inserting in  
4 the first sentence, following the words “one hundred and twenty-  
5 eight” the following:— “and no property protected by a conserva-  
6 tion restriction, preservation restriction, agricultural preservation  
7 restriction, or watershed preservation restriction under sections 31  
8 through 33 of chapter 184”.

1 SECTION 6. Said section 5B of said chapter 79, as so  
2 appearing, is hereby further amended by inserting in the first sen-  
3 tence, following the words “as so defined,” the following:— “or  
4 not so protected under sections 31 through 33 of chapter 184,”.

1 SECTION 7. Section 31 of chapter 184 of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 deleting from the first sentence in the first paragraph the words  
4 “either in perpetuity or for a specified number of years” and by  
5 inserting at the end of said paragraph the following sentence:—  
6 Such conservation restrictions shall be in perpetuity or for a speci-  
7 fied number of years and shall only be released as provided in  
8 section 32 of chapter 184.

1 SECTION 8. Said section 31 of said chapter 184, as so  
2 appearing, is hereby further amended by inserting at the end of the

3 second paragraph the following sentence:— Such preservation  
4 restrictions shall be in perpetuity or for a specified number of  
5 years and shall only be released as provided in section 32 of  
6 Chapter 184.

1 SECTION 9. Said section 31 of said chapter 184, as so  
2 appearing, is hereby further amended by striking out the first two  
3 sentences of the third paragraph and replacing them with the  
4 following two sentences:—

5 An agricultural preservation restriction means a right, whether  
6 or not stated in the form of a restriction, easement, covenant or  
7 condition, in any deed, will or other instrument executed by or on  
8 behalf of the owner of the land appropriate to retaining land or  
9 water areas predominantly in their agricultural forming or forest  
10 use, to forbid or limit any or all acts or uses detrimental to such  
11 retention of the land for agricultural use. Such agricultural preser-  
12 vation restrictions shall be in perpetuity and shall only be released  
13 as provided in section 32 of Chapter 184.

1 SECTION 10. Said section 31 of said chapter 184, as so  
2 appearing, is hereby further amended by striking out the first two  
3 sentences of the fourth paragraph and replacing them with the  
4 following two sentences:—

5 A watershed preservation restriction means a right, whether or  
6 not stated in the form of a restriction, easement, covenant or con-  
7 dition, in any deed, will or other instrument executed by or on  
8 behalf of the owner of the land appropriate to retaining land pre-  
9 dominantly in such condition to protect the water supply or poten-  
10 tial water supply of the commonwealth, to forbid or limit any or  
11 all acts or uses detrimental to such watershed. Such watershed  
12 preservation restrictions shall be in perpetuity and shall only be  
13 released as provided in section 32 of Chapter 184.

1 SECTION 11. The first paragraph of section 32 of chapter 184  
2 of the General Laws, as appearing in the 2002 Official Edition, is  
3 hereby amended by adding the following sentence:— The  
4 common law doctrine of merger shall not apply to any restrictions  
5 approved as provided in this paragraph.

1 SECTION 12. Said section 32 of said chapter 184, as so  
2 appearing, is hereby further amended by striking out the second  
3 and third paragraphs and inserting in place thereof the following  
4 2 paragraphs:—

5 Conservation, preservation, agricultural preservation, water-  
6 shed preservation and affordable housing restrictions are interests  
7 in land, and may be acquired by any governmental body or chari-  
8 table corporations and trusts which have power to acquire inter-  
9 ests in land, in the same manner as it may acquire other interests  
10 in land. The conservation, preservation, agricultural preservation,  
11 watershed preservation and affordable housing restrictions may be  
12 enforced by injunction or other proceeding and shall entitle repre-  
13 sentatives of the holder to enter the land in a reasonable manner  
14 and at reasonable times to assure compliance. Restrictions may be  
15 released, in whole or in part, by the holder for consideration, if  
16 any, as the holder may determine, in the same manner as the  
17 holder may dispose of land or other interests in land, but only  
18 after a public hearing upon reasonable public notice, by the gov-  
19 ernmental body holding the restriction, or, if held by a charitable  
20 corporation or trust, by the mayor, or in cities having a city man-  
21 ager, the city manager, the city council of the city or the selectmen  
22 of the town, whose approval shall be required, and in the case of a  
23 restriction requiring approval by the secretary of environmental  
24 affairs, the Massachusetts historical commission, the commis-  
25 sioner of agricultural resources, the director of urban parks in the  
26 department of conservation and recreation, or the director of the  
27 department of housing and community development, only with  
28 like approval of the release. Conservation, agricultural preserva-  
29 tion and watershed preservation restrictions, in addition to other  
30 requirements of this section, may be released, in whole or in part,  
31 only with approval of two-thirds of both branches of the general  
32 court, by a vote taken by the yeas and nays, that the restriction  
33 shall be released for the public good.

34 No restriction that has been purchased with state funds or  
35 which has been granted in consideration of a loan or grant made  
36 with state funds shall be released unless it is repurchased by the  
37 land owner at its then current fair market value. Funds so received  
38 shall revert to the fund sources from which the original purchase,  
39 loan or grant was made, or, lacking such sources, shall be made

40 available to acquire similar interests in other land. Agricultural  
41 preservation restrictions shall be released by the holder only if the  
42 land is no longer considered suitable for agricultural or horticultural  
43 purposes and unless two-thirds of both branches of the  
44 general court, by a vote taken by yeas and nays, vote that the  
45 restrictions shall be released for the public good. Watershed  
46 preservation restrictions shall be released by the holder only if the  
47 land is deemed by the commissioner of conservation and recreation  
48 and the secretary of environmental affairs to no longer be of  
49 any importance to the water supply or potential water supply of  
50 the commonwealth and unless two-thirds of both branches of the  
51 general court, by a vote taken by yeas and nays, vote that the  
52 restrictions shall be released for the public good.

1 SECTION 13. Said section 32 of said chapter 184, as so  
2 appearing, is hereby further amended by striking out the seventh  
3 paragraph and inserting in place thereof the following para-  
4 graph:—

5 Nothing in this section shall prohibit the department of  
6 telecommunications and energy, without the need for approval of  
7 the general court or of the state authority which approves any  
8 affected restriction, from authorizing the taking of easements for  
9 the purpose of utility services, or the granting of exemptions from  
10 any affected restrictions with respect to such easements, provided  
11 that: (a) said department shall require the minimum practicable  
12 interference with farming operations or other purposes of the  
13 affected restriction with determination to be made after a public  
14 hearing, which, in the event a public hearing concerning the same  
15 land is being or will be conducted under chapter 164, section 75C,  
16 shall be consolidated with such hearing, and of which all holders  
17 of the affected restriction have been given reasonable prior written  
18 notice; (b) the applicant has obtained, or subsequently shall  
19 obtain, all necessary licenses, permits, approvals and other author-  
20 rizations from the appropriate state agencies; and (c) whether said  
21 department proceeds by authorizing a taking or granting an  
22 exemption, the applicant shall, under chapter 79, compensate the  
23 owner of the property and each restriction holder to the extent  
24 each interest may warrant.

1 SECTION 14. Sections 4 through 13 of this act shall apply to  
2 all restrictions authorized under sections 31 and 32 of chapter 184  
3 of the General Laws that exist on the effective date of this act.