

of eastern Middlesex to indemnify him for losses sustained in a burglary of the courthouse of said court on June twenty-second, nineteen hundred and sixty-eight. If after such payment such officer receives any sum in reduction of such loss, he shall forthwith pay over the same to said county of Middlesex.

SECTION 2. This act shall take effect upon its passage.

Approved August 11, 1969.

Chap. 666. AN ACT PROTECTING CONSERVATION AND PRESERVATION RESTRICTIONS HELD OR APPROVED BY APPROPRIATE PUBLIC AUTHORITY, PROVIDING FOR PUBLIC RESTRICTION TRACT INDEXES AT REGISTRIES OF DEEDS AND CLARIFYING CERTAIN STATUTORY PROVISIONS RELATING TO RESTRICTIONS.

Be it enacted, etc., as follows:

SECTION 1. Section 23 of chapter 184 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence: — This section shall not apply to conditions or restrictions existing on July sixteenth, eighteen hundred and eighty-seven, to those contained in a deed, grant or gift of the commonwealth, or to those having the benefit of section thirty-two.

SECTION 2. Section 26 of said chapter 184, as appearing in section 1 of chapter 448 of the acts of 1961, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph: —

All restrictions on the use of land or construction thereon which run with the land subject thereto and are imposed by covenant, agreement, or otherwise, whether or not stated in the form of a condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking shall be subject to this section and sections twenty-seven through thirty, except (a) restrictions in leases, mortgages and other security instruments, (b) restrictions in orders of taking by the commonwealth or a political subdivision or public instrumentality thereof made before January first, nineteen hundred and seventy and (c) conservation and preservation restrictions, as defined in section thirty-one which have the benefit of section thirty-two, and other restrictions held by any governmental body, if the instrument imposing such conservation, preservation or other restriction is duly recorded and indexed in the grantor index in the registry of deeds or registered in the registry district of the land court for the county or district where the land lies so as to affect its title, and describes the land by metes and bounds or by reference to a recorded or registered plan showing its boundaries, and if affecting land not registered is also indexed in a public restriction tract index maintained pursuant to section thirty-three, or, if not so indexed, there has been no failure to file a notice of restriction as therein provided. "Governmental body", as referred to in this section and sections thirty-two and thirty-three, means the United States or the commonwealth, acting through any of its departments, divisions, commissions, boards or agencies, or any political subdivision or public instrumentality thereof or any public authority.

SECTION 3. The second paragraph of said section 26 of said chapter 184, as so appearing, is hereby amended by striking out line 1 and inserting in place thereof the following line: — For the purposes of this section and sections twenty-seven to thirty, inclusive: —.

SECTION 4. Section 27 of said chapter 184, as so appearing, is hereby amended by inserting after the word “benefit”, in line 4, the following words: — or is entitled to such benefit as a successor to such party.

SECTION 5. Said chapter 184 is hereby further amended by adding the following three sections: —

Section 31. A conservation restriction means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming or forest use, to forbid or limit any or all (a) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (b) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (c) removal or destruction of trees, shrubs or other vegetation, (d) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (e) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (f) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (g) other acts or uses detrimental to such retention of land or water areas.

A preservation restriction means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking, appropriate to preservation of a structure or site historically significant for its architecture, archeology or associations, to forbid or limit any or all (a) alterations in exterior or interior features of the structure, (b) changes in appearance or condition of the site (c) uses not historically appropriate, or (d) other acts or uses detrimental to appropriate preservation of the structure or site.

Section 32. No conservation restriction, as defined in section thirty-one, held by any governmental body or by a charitable corporation or trust whose purposes include conservation of land or water areas or of a particular such area, and no preservation restriction, as defined in section thirty-one, held by any governmental body or by a charitable corporation or trust whose purposes include preservation of buildings or sites of historical significance or of a particular such building or site, shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of the benefit being assignable or being assigned to any other governmental body or to any charitable corporation or trust with like purposes, provided (a) in case of a restriction held by a city or town or a commission, authority, or other instrumentality thereof it is approved by the commissioner of natural resources if a conservation restriction or the Massachusetts historical commission if a preservation restriction, and (b) in case of a restriction held by a charitable corporation or trust it is approved by the mayor, or in cities having a city manager the city manager, and city

council of the city, or the selectmen or town meeting of the town, in which the land is situated, and by the commissioner of natural resources if a conservation restriction or the Massachusetts historical commission if a preservation restriction.

Such conservation and preservation restrictions are interests in land and may be acquired by any governmental body or such charitable corporation or trust which has power to acquire interest in land, in the same manner as it may acquire other interests in land. Such a restriction may be enforced by injunction or proceeding in equity, and shall entitle representatives of the holder of it to enter the land in a reasonable manner and at reasonable times to assure compliance. Such a restriction may be released, in whole or in part, by the holder for such consideration, if any, as the holder may determine, in the same manner as the holder may dispose of land or other interests in land, but only after a public hearing upon reasonable public notice, by the governmental body holding the restriction or if held by a charitable corporation or trust, by the mayor, or in cities having a city manager the city manager, and city council of the city or the selectmen of the town, whose approval shall be required, and in case of a restriction requiring approval by the commissioner of natural resources or the Massachusetts historical commission, only with like approval of the release.

Approvals of restrictions and releases shall be evidenced by certificates of the commissioner of natural resources or the chairman, clerk or secretary of the commission, city council, selectmen or town, duly recorded or registered.

In determining whether the restriction or its continuance is in the public interest, the governmental body acquiring, releasing or approving shall take into consideration the public interest in such conservation or preservation, and any national, state, regional and local program in furtherance thereof, and also any public, state, regional or local comprehensive land use or development plan affecting the land, and any known proposal by a governmental body for use of the land.

This section shall not be construed to imply that any restriction, easement, covenant or condition which does not have the benefit of this section shall, on account of any provision hereof, be unenforceable. Nothing in this section or sections thirty-one and thirty-three shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise and to use land for public purposes.

Section 33. Any city or town may file with the register of deeds for the county or district in which it is situated a map or set of maps of the city or town, to be known as the public restriction tract index, on which may be indexed conservation and preservation restrictions and restrictions held by any governmental body. Such indexing shall indicate sufficiently for identification (a) the land subject to the restriction, (b) the name of the holder of the restriction, and (c) the place of record in the public records of the instrument imposing the restriction. Maps used by assessors to identify parcels taxed, and approximate boundaries without distances, shall be sufficient, and, where maps by parcels are not available, addition to other maps of approximate boundaries of restricted land shall be sufficient. If the names of the holders and the instrument references cannot be conveniently shown directly on the maps, they may be indicated by appropriate reference to accompanying lists.

Such maps may also indicate similarly, so far as practicable, (a) any order or license issued by a governmental body entitled to be recorded or registered, (b) the approximate boundaries of any historic or architectural control district established under chapter forty C or any special act, ordinance or by-law where a certificate of appropriateness may be required for exterior changes, (c) any landmark certified by the Massachusetts historical commission pursuant to section twenty-seven of chapter nine, (d) any other land which any governmental body may own in fee, or in which it may hold any other interest, and (e) such additional data as the filing governmental body may deem appropriate.

Whenever any instrument of acquisition of a restriction or order or other appropriate evidence entitled to be indexed in a public restriction tract index is submitted for such indexing, the register shall make, or require the holder of the right to enforce the restriction or order or interest to make, appropriate additions to the tract index, and such addition shall, as to any restriction or order or other appropriate evidence previously recorded entitled to be indexed, be likewise made on request of the holder of the right to enforce it.

The maps shall be in such form that they can be readily added to, changed and reproduced, and shall be a public record, appropriately available for public inspection. If any governmental body, other than a city or town in which the land affected lies, holds a right to enforce a restriction or order or an interest entitled to be indexed in a public restriction tract index for any city or town which has not filed such an index, or if the commissioner of natural resources or the Massachusetts historical commission approves a conservation or preservation restriction held by a charitable corporation or trust so entitled, and the city or town does not within one year after written request to the mayor or selectmen file a sufficient map or set of maps for the purpose, the holding governmental body or approving commissioner or commission may do so.

The registers of deeds, or a majority of them, may, from time to time with the approval of the attorney general, make and amend rules and regulations for administration of public restriction tract indexes, and the provisions of section thirteen A of chapter thirty-six shall not apply thereto. New tract indexes may be filed, from time to time, upon compliance with such rules and regulations as may be necessary to assure against omission of prior additions and references still effective.

Except in the case of a restriction noted on the certificate of title of registered land subject thereto, no conservation or preservation restriction having the benefit of section thirty-two, and no other restriction held by any governmental body, which is not so indexed in the public restriction tract index shall be enforceable after thirty years from the recording of the instrument imposing it unless before the expiration of such thirty years there is similarly recorded a notice of restriction identifying the instrument and its place of record in the public records and naming one or more of the owners of record of each parcel of land to be affected by the notice, nor enforceable after twenty years from the recording of any such notice unless before the expiration of twenty years another such notice is so recorded, and in each case the notice is indexed in the grantor index under the owner or owners named. Such notices may be given by any official of a governmental body holding the restriction, by the commissioner of natural resources in case of a restriction approved

by him, by the chairman or acting chairman of the Massachusetts historical commission in case of a restriction approved by it, or by any official of any charitable corporation or trust holding the restriction or whose purposes include, in case of a conservation restriction, the conservation of land or water areas, or, in case of a preservation restriction, the preservation of buildings or sites of historical significance.

SECTION 6. Sections thirty-one, thirty-two and thirty-three of chapter one hundred and eighty-four of the General Laws, inserted by section five of this act, shall apply to conservation and preservation restrictions not otherwise unenforceable contained in instruments executed or probated before the effective date of this act, as well as to those contained in instruments executed or probated thereafter. The time for filing a notice of restriction with respect to any restriction existing on said effective date and not theretofore required to be filed shall not expire sooner than one year after said effective date.

Approved August 11, 1969.

Chap. 667. AN ACT RELATIVE TO THE QUALIFICATIONS OF PERSONS APPOINTED TO FILL VACANCIES IN THE POSITIONS OF SUPERINTENDENTS, DIRECTORS OR OTHER HEADS OF RESIDENTIAL MENTAL HEALTH OR RETARDATION FACILITIES OF THE DEPARTMENT OF MENTAL HEALTH.

Be it enacted, etc., as follows:

Section 28 of chapter 123 of the General Laws is hereby amended by striking out the first two sentences and inserting in place thereof the following five sentences:—When a vacancy occurs in the position of superintendent of a state hospital or state school or in the directorship or other head of any residential mental health or retardation facility of the department, the commissioner shall appoint to such vacancy a person who holds an earned doctoral degree from an accredited college or university in a discipline appropriate to the care, treatment or education of the mentally ill or mentally retarded, or he may appoint a person holding an earned graduate degree in hospital administration from an accredited college or university. Any person receiving such appointment shall have had at least four years of administrative or clinical experience in a state or federal facility for mental illness or mental retardation or equivalent experience as determined by the commissioner. In the case of those disciplines which provide formal board certification, the appointee as superintendent, director or other head of a residential mental health or retardation facility of the department shall, if not so certified, be eligible for such certification. In the case of uncertainty of the board as to the eligibility of an appointee, the decision of the commissioner with respect to such qualification shall be final. Prior to the appointment of a superintendent, director or other head of a residential mental health or retardation facility of the department, the commissioner shall consult with the area board or boards, the board of trustees concerned with such facility and with the heads of such other institutions of higher learning or hospitals as are integrated with the particular facility.

Approved August 11, 1969.