

HOUSE No. 3710

By Mr. Fitzgerald of Boston, petition of Kevin W. Fitzgerald relative to certain public deed restrictions and the development of affordable housing. Housing and Urban Development.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety.

AN ACT AMENDING CERTAIN PUBLIC DEED RESTRICTIONS TO RETAIN AFFORDABLE HOUSING.

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 26 of Chapter 184 of the General Laws
2 is hereby amended by striking out the first paragraph thereof as
3 amended by Section 1 of Chapter 351 of the Acts of 1985 and
4 by inserting in place thereof the following paragraph: —
5 All restrictions on the use of land or construction thereon which
6 run with the land subject thereto and are imposed by covenant,
7 agreement, or otherwise, whether or not stated in the form of a
8 condition, in any deed, will or other instrument executed by or
9 on behalf of the owner of the land or in any order of taking shall
10 be subject to this Section and Sections Twenty-Seven through
11 Thirty, except (a) restrictions in leases, mortgages and other
12 security instruments, (b) restrictions in orders of taking by the
13 Commonwealth or a political subdivision or public instrumental-
14 ity thereof made before January First, Nineteen Hundred and
15 Seventy and (c) conservation, preservation, and affordable
16 housing restrictions, agricultural preservation, as defined in
17 section thirty-one which have the benefit of Section Thirty-Two,
18 and other restrictions held by any governmental body, if the
19 instrument imposing such conservation, preservation, agricultural
20 preservation, affordable housing or other restriction is duly
21 recorded and indexed in the grantor index in the registry of deeds
22 or registered in the registry district of the land court for the county
23 or district wherein the land lies so as to affect its title, and describes

24 the land by metes and bounds or by references to a recorded or
25 registered plan showing its boundaries. "Governmental body", as
26 referred to in this Section and Sections Thirty-Two and Thirty-
27 Three, means the United States or the Commonwealth, acting
28 through any of its departments, divisions, commissions, boards
29 or agencies, or any political subdivision or public instrumentality
30 thereof or any public authority or any quasi-public entity or any
31 instrumentality created pursuant to Chapter 40F of the General
32 Laws, whether acting for its own account, or as agent or designee
33 for or assignee of any private individual or private entity which
34 has been required to place such restriction in its chain of title as
35 a condition to receiving financial or other assistance from the
36 United States or the Commonwealth, acting through any of its
37 departments, divisions, commissions, boards or agencies, or any
38 political subdivision or public instrumentality thereof or any
39 public authority or any quasi-public entity or any instrumentality
40 created pursuant to Chapter 40F of the General Laws.

1 SECTION 2. Section 31 of Chapter 184 of the General Laws
2 as last amended by Chapter 81 of the Acts of 1977 and by Sec-
3 tion 2 of Chapter 780 of the Acts of 1977 is further amended by
4 adding at the end thereof the following paragraph: —

5 An affordable housing restriction means a right, either in
6 perpetuity or for a specified number of years, whether or not stated
7 in the form of a restriction, easement, covenant or condition in
8 any deed, mortgage, will, agreement, or other instrument executed
9 by or on behalf of the owner of the land appropriate to (a) limiting
10 the use of all or part of the land to occupancy by persons, or
11 families of low or moderate income in either rental housing or
12 other housing or (b) restricting the resale price of all or part of
13 the property in order to assure its affordability by future low and
14 moderate income purchasers or (c) in any way limiting or
15 restricting the use of enjoyment of all or any portion of the land
16 for the purpose of encouraging or assuring creation or retention
17 of rental and other housing for occupancy by low and moderate
18 income persons and families. Without in any way limiting the
19 scope of the foregoing definition, any restriction, easement,
20 covenant or condition placed in any deed, mortgage, will,
21 agreement or other instrument pursuant to the requirements of

22 the Rental Housing Development Action Loan Program or the
23 Housing Innovations Fund Program established pursuant to
24 Section 3 of Chapter 226 of the Acts of 1987 or pursuant to the
25 requirements of any program established by the Massachusetts
26 Housing Partnership Fund Board established pursuant to
27 Chapter 405 of the Acts of 1985, including without limitation the
28 Homeownership Opportunity Program, or pursuant to the
29 requirements of Sections 25 through 27 of Chapter 23B of the
30 General Laws, or pursuant to the requirements of any regulations
31 or guidelines promulgated pursuant to any of the foregoing, shall
32 be deemed to be an affordable housing restriction within the
33 meaning of this paragraph.

1 SECTION 3. Said Chapter 184 is hereby further amended by
2 striking out Section 32 as most recently amended by Section 3
3 of Chapter 780 of the Acts of 1977, and inserting in place thereof
4 the following Section: —

5 Section 32. No conservation restriction or agricultural
6 preservation restriction as defined in Section Thirty-One, held by
7 an governmental body or by a charitable corporation or trust
8 whose purposes include conservation of land or water areas or
9 of a particular such area, and no preservation restriction, as
10 defined in Section Thirty-One, held by any governmental body
11 or by a charitable corporation or trust whose purposes include
12 preservation of buildings or sites of historical significance or of
13 a particular such building or site, and no affordable housing
14 restriction as defined in Section Thirty-One, held by any govern-
15 mental body or by a charitable corporation or trust whose
16 purposes include creating or retaining or assisting in the creation
17 or retention of affordable rental or other housing for occupancy
18 by persons or families of low or moderate income shall be
19 unenforceable on account of lack of privity of estate or contract
20 or lack of benefit to particular land or on account of the benefit
21 being assignable or being assigned to any other governmental
22 body or to any charitable corporation or trust with like purposes,
23 or on account of the governmental body or the charitable corpor-
24 ation or trust having received the right to enforce the restriction
25 by assignment, provided (a) in case of a restriction held by a city
26 or town or a commission, authority, or other instrumentality

27 thereof it is approved by the Secretary of Environmental Affairs
28 if a conservation restriction, the Commission of Food and
29 Agriculture if an agricultural preservation restriction, or the
30 Secretary of the Executive Office of Communities and
31 Development if an affordable housing restriction, the Massachu-
32 setts historical commission if a preservation restriction, and (b)
33 in case of a restriction held by a charitable corporation or trust
34 it is approved by the Mayor, or in cities having a city manager
35 the city manager, and the city council of the city, or the selectmen
36 or town meeting of the town, in which the land is situated, and
37 the Secretary of Environmental Affairs if a conservation
38 restriction, the Commissioner of Food and Agriculture if an
39 agricultural preservation restriction, or the Secretary of the
40 Executive Office of Communities and Development if an
41 affordable housing restriction, the Massachusetts historical
42 commission if a preservation restriction.

43 Such conservation, preservation, and affordable housing,
44 agricultural preservation restrictions are interests in land and may
45 be acquired by any governmental body or such charitable corpora-
46 tions or trust which have power to acquire interest in the land,
47 in the same manner as it may acquire other interests in land. Such
48 a restriction may be enforced by injunction or other proceeding,
49 and shall entitle representatives of the holder to enter the land
50 in a reasonable manner and at reasonable times to assure
51 compliance. Such a restriction may be released, in whole or in
52 part, by the holder for such consideration, if any, as the holder
53 may determine, in the same manner as the holder may dispose
54 of land or other interests in land, but only after a public hearing
55 upon reasonable public notice, by the governmental body holding
56 the restriction or if held by a charitable corporation or trust, by
57 the mayor, or in cities having a city manager the city manager,
58 the city council of the city or the selectmen of the town, whose
59 approval shall be required, and in case of a restriction requiring
60 approval by the Secretary of Environmental Affairs, the Massa-
61 chusetts historical commission, or the Secretary of the Executive
62 Office of Communities and Development, the Commissioner of
63 Food and Agriculture, only with like approval of the release.

64 No restriction that has been purchased with state funds or which
65 has been granted in consideration of a loan or grant made with

66 state funds shall be released unless it is repurchased by the land
67 owner at its then current fair market value. Funds so received shall
68 revert to the fund sources from which the original purchase, loan,
69 or grant was made, or, lacking such source, shall be made available
70 to acquire similar interest in other land. Agricultural preservation
71 restrictions shall be released by the holder only if the land is no
72 longer deemed suitable for agricultural or horticultural purposes
73 or unless two-thirds of both branches of the General Court, by
74 a vote taken by yeas and nays, vote that the restrictions shall be
75 released for the public good.

76 Approvals of restrictions and releases shall be evidenced by
77 certificates of the Secretary of Environmental Affairs or the
78 chairman, Clerk or Secretary of the Massachusetts historical
79 commission, or the Commissioner of Food and Agriculture, or
80 the Secretary of the Executive Office of Communities and
81 Development or the city council, or selectmen of the town, as
82 applicable duly recorded or registered.

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

92 This Section shall not be construed to imply that any restriction,
93 easement, covenant or condition which does not have the benefit
94 of this section shall, on account of any provisions hereof, be
95 unenforceable. Nothing in this Section or Section Thirty-One and
96 Section Thirty-Three shall diminish the powers granted by any
97 general or special law to acquire by purchase, gift, eminent domain
98 or otherwise to use land for public purposes.

99 Nothing in this Section shall prohibit the Department of Public
100 Utilities from authorizing the taking of easements for the purpose
101 of utility services provided that (a) said department shall require
102 the minimum practicable interference with farming operations
103 with respect to width of easement, pole locations and other
104 pertinent matters, (b) the applicant has received all necessary

105 licenses, permits, approvals and other authorizations from the
106 appropriate state agencies, (c) the applicant shall compensate the
107 owner of the property in the same manner and at the same fair
108 market value as if the land were not under restriction.

1 SECTION 4. The first sentence in the first paragraph of Sec-
2 tion 33 of said Chapter 184 is hereby amended by striking out
3 said first sentence as amended by Section 4 of Chapter 780 of the
4 Acts of 1977 and inserting in place thereof the following
5 sentence: — Any city or town may file with the register of deeds
6 for the county or district in which it is situated a map or set of
7 maps of the city or town, to be known as the public restriction
8 tract index, on which may be indexed conservation, preserva-
9 tion, and affordable housing, agricultural preservation, restric-
10 tions and restrictions held by any governmental body.

1 SECTION 5. The second paragraph of said Section 33 of said
2 Chapter 184 is hereby amended by striking out said second para-
3 graph and inserting in place thereof the following paragraph: —
4 Whenever any instrument of acquisition of a restriction or order
5 or other appropriate evidence entitled to be indexed in a public
6 restriction tract index is submitted for such indexing, the register
7 shall make, or require the holder of the right to enforce the
8 restriction or order or interest to make, appropriate additions to
9 the tract index at the option of the holder of the right to enforce
10 it.

1 SECTION 6. The second sentence in the third paragraph of
2 said Section 33 of said Chapter 184 is hereby amended by striking
3 out said second sentence as amended by Section 5 of Chapter 780
4 of the Acts of 1977 and inserting in place thereof the following
5 sentence: — If any governmental body, other than a city or town
6 in which the land affected lies, holds a right to enforce a restriction
7 or order or an interest entitled to be indexed in a public restriction
8 tract index for any city or town which has not filed such an index,
9 or if the Secretary of Environmental Affairs or the Massachusetts
10 historical commission or the Commissioner of Food and
11 Agriculture or the Secretary of the Executive Office of
12 Communities and Development approves a conservation or

13 preservation restriction or agricultural preservation restriction or
14 affordable housing restriction held by a charitable corporation or
15 trust so entitled, and the city or town does not within one year
16 after written request to the mayor or selectmen file a sufficient
17 map or set of maps for the purpose, the holding governmental
18 body of approving secretary or commission may do so.

