HOUSE . . . . . No. 3943

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:

SECTION 1. Section 22 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by adding the following paragraph:-

A landowner who is subject to a non-development covenant under this section and who seeks to terminate the non-development covenant and instead seeks payment under section 23 for an agricultural preservation restriction shall reimburse the department for any compensation provided under the non-development covenant on a pro-rata basis according to a schedule established by the department prior to or simultaneous with the granting of the agricultural preservation restriction.

SECTION 2. Chapter 20 of the General Laws is hereby amended by striking out section 23 and inserting in place thereof the following section:—

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

The commissioner may, from funds appropriated to carry out this section or received from other sources, pay any agricultural landowner for a project submitted or approved by a city or town and approved by the agricultural lands preservation committee established by section 24 the amount determined by the committee to be equitable in consideration of anticipated benefits from the project, but not to exceed the difference between the fair market value of the land without an agricultural restriction and the fair market value of the land with an agricultural 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
27 commonwealth, provided, however, that: (i) a city or town in which the land is located that
28 provides assistance satisfactory to the agricultural lands preservation committee, including but
29 not limited to providing funds or portions thereof toward the purchase of the restriction and
30 providing legal services, shall hold title to the land jointly with the commonwealth, and (ii) a
31 charitable corporation, charitable trust, or land bank, exempt under 26 U.S.C. section 501(c)(3),
32 that provides assistance satisfactory to the agricultural lands preservation committee, including
33 but 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
36 of 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
55 within 180 days, the commissioner or his agents may, after giving reasonable notice, enter upon
56 the 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
78 governing alternative energy-generating facilities on land subject to an agricultural preservation
79 restriction to assure the placement, construction, and operation do not defeat or derogate from the
80 intent of this section, which is to keep land or water areas predominately in their agricultural
81 farming or forest use. The regulations may require mitigation payments to the Agricultural
82 Preservation Trust Fund, established by section 2CCCC of chapter 29, and may allow for
83 prescription or approval of the commercial relationships required to own or operate such
84 facilities.

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

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

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

97 The advisory committee shall consist of 5 members: (1) a representative of the Natural
98 Resources Conservation Service with the United States Department of Agriculture, appointed by

99 the Massachusetts director of the National Resource Conservation Service; (2) a representative of
100 the center for agriculture at University of Massachusetts at Amherst appointed by the dean of the
101 college of natural sciences; (3) a representative of the Massachusetts Farm Bureau Federation,
102 Inc., appointed by its board of directors; (4) a representative of a land preservation organization
103 operating within the commonwealth appointed by the agricultural lands preservation committee;
104 and (5) a member of the agricultural land preservation committee, appointed by the
105 commissioner, who shall chair the advisory committee.

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

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

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

120 SECTION 5. Chapter 79 of the General Laws is hereby amended by striking out section
121 5A and inserting in place thereof the following section:--

122 Section 5A. No historical or archeological landmark certified under section 27 of chapter
123 9, no property owned, preserved and maintained by any historical organization or society as an
124 ancient landmark or as property of historical or antiquarian interest, and no property protected by
125 a preservation restriction under sections 31 to 33, inclusive, of chapter 184 shall be taken without
126 a special law authorizing the taking.

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

136 chapter 184, and without occupied buildings situated thereon is available for the public use for
137 which it is intended to take his property.

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

141 SECTION 8. The first paragraph of said section 31 of said chapter 184, as so appearing,
142 is hereby amended by adding the following sentence:- A conservation 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 9. The second paragraph of said section 31 of said chapter 184, as so
145 appearing, is hereby amended by adding the following sentence: — A preservation restriction
146 shall be in perpetuity or for a specified number of years and shall only be released as provided in
147 section 32.

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

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

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

170 SECTION 13. Said first paragraph of said section 32 of said chapter 184, as so
171 appearing, is hereby further amended by adding the following 2 sentences:— The common law

172 doctrine of merger shall not apply to any restrictions approved as provided in this paragraph;
173 notwithstanding this provision, restrictions shall be held or co-held by eligible third parties other
174 than the owner. Notwithstanding clause (a) of section 27, grantees shall be deemed to be
175 benefitted by and shall have standing to enforce restrictions under this paragraph.

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

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

187 A restriction may be released in whole or in part, including by amendment allowing a
188 previously prohibited act or use, or an act or use that was not previously reserved or allowed, by
189 the holder for consideration, if any, as the holder may determine, in the same manner as the
190 holder may dispose of land or other interests in land, but only after the holder or co-holders has
191 determined that it is no longer suitable for the purposes of the restriction and after a public
192 hearing upon reasonable public notice, by the governmental body holding the restriction, or, if
193 held by a charitable corporation or trust, by the mayor, or in cities having a city manager, the city
194 manager, the city council of the city or the selectmen of the town, whose approval shall be
195 required, and in the case of a restriction requiring approval by the secretary of energy and
196 environmental affairs, the Massachusetts historical commission, the commissioner of agricultural
197 resources, the director of urban parks in the department of conservation and recreation, or the
198 director of the department of housing and community development, only with like approval of
199 the release.

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

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

208 Conservation restrictions shall be released only if the secretary of energy and
209 environmental affairs determines that the land is no longer suitable for the purposes of the
210 restriction. Agricultural preservation restrictions shall be released by the holder only if the
211 agricultural lands preservation committee, established by section 24 of chapter 20, and the
212 commissioner of agricultural resources determine that the land is no longer suitable for
213 agricultural or horticultural purposes. Watershed preservation restrictions shall be released by
214 the holder only if the commissioner of conservation and recreation and the secretary of energy
215 and environmental affairs determine that the land is no longer of any importance to the water
216 supply or potential water supply of the commonwealth.

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

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

227 Nothing in this section shall prohibit the department of telecommunications and energy
228 from authorizing the taking of easements for the purpose of utility services, or the granting of
229 exemptions from any affected restrictions with respect to those easements, provided that: (a) the
230 department shall require the minimum practicable interference with farming operations or other
231 purposes of the affected restriction; (b) the applicant has obtained, or subsequently shall obtain,
232 all necessary licenses, permits, approvals and other authorizations from the appropriate state
233 agencies; and (c) whether said department proceeds by authorizing a taking or granting an
234 exemption, the applicant shall, under chapter 79, compensate the landowner and each restriction
235 holder to the extent each interest may warrant. The department shall determine the minimum
236 practicable interference after a public hearing. All holders of the affected restriction shall be
237 given reasonable, prior written notice of the public hearing. If the land is also subject to a public
238 hearing under section 75 of chapter 164, the public hearing required under this paragraph shall be
239 consolidated with that public hearing.

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

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

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