



***AN ACT AMENDING THE CONSERVATION RESTRICTION AND
AGRICULTURAL PRESERVATION STATUTES (HB798)***

Sponsored by: Representative Stephen Kulik (D-Worthington)

Challenge

As land values escalate and public funding for land conservation is constrained by general obligation bond spending caps, the use of conservation restrictions has become an increasingly important land protection tool in Massachusetts. Many landowners—particularly owners of large parcels of lands on the perimeters of the Commonwealth’s most rapidly developing areas or ‘sprawl frontiers’—want to preserve their property and livelihoods, and if possible, hand down to their children the acreage they own. Conservation restrictions (CR)—which are known as ‘easements’ in many parts of the nation—enable a private landowner to protect natural resources on his/her property while retaining full ownership and the ability to sell or convey the property, subject to the terms of the restriction.

The Massachusetts legislature authorized the use of CRs as a land protection tool in 1969. A CR is a voluntary, legally binding, permanent agreement between a landowner (grantor) and a holder (grantee), a public agency or a private non-profit land conservation organization. The grantor agrees to limit the use of his/her property for the purpose of protecting its conservation values. The conservation restriction is recorded at the Registry of Deeds and runs with the title. By permanently donating or selling the future development rights to their land to a non profit conservation organization or a government agency, a landowner may immediately obtain a federal income tax charitable deduction, and reduce the market value of the acreage used to compute estate taxes.

Agricultural preservation restrictions (APR) are a specific type of conservation restriction designed to help farmers realize equity without being forced to sell their land for development purposes. The equity is often reinvested back into the protected farm by way of the purchase of more land, equipment or buildings and through the retirement of farm debt.

Massachusetts is the only state in which conservation restrictions must be approved by the municipality involved and by the agency of the Commonwealth designated in the statute for that particular form of restriction. All CRs must be approved by the Secretary of the Executive Office of Energy and Environmental Affairs to ensure public benefit.

Despite this safeguard, questions remain about the long-term durability of conservation restrictions. Federal income tax law allows a deduction for the gift of a restriction only if it operates in perpetuity. Because the use of CRs is a relatively modern policy innovation, it remains seen how ‘permanent’ may be interpreted by the courts under traditional common law doctrines. With thirty-five years of experience in using CRs in Massachusetts, land protection professionals have identified several proactive steps that can be taken to enhance confidence, stability, and innovation with this tool.

Solution

This legislation will strengthen conservation restrictions and agricultural preservation restrictions as tools for conserving land. The bill would:

- Require that no CR could be released without a two-third vote of each branch of the legislature. This mandate is consistent with EOEEA policy and reinforces requirements proposed in legislation to ensure no-net loss of conservation land under Article 97 of the Amendments to the Constitution (see SB542, *An Act to Protect the Natural and Historic Resources of the Commonwealth*);
- Clarify that the common law doctrine of “merger of interests” does not apply to CRs. This would remove the real possibility that, under the merger doctrine, the restriction would disappear or merge with the land title if a holder of the restriction (the entity responsible for enforcement of its provisions) later becomes the owner of the restricted parcel;
- Clarify the standards of taking of restrictions by public utilities as authorized by the Department of Public Utilities (formerly the Department of Telecommunications and Energy). These clarifications are the result of successful negotiations with the utility industry and provide a clear and well-established mechanism for releasing restrictions that lie in the path of a pipeline or transmission line corridors while ensuring that the broad conservation values of these restrictions are respected;
- Authorize the Commonwealth to co-hold APRs with land banks, private non-profit land conservation organizations, and other charitable corporations (as well as municipalities which are already so authorized) in exchange for their assistance to the Commonwealth in funding, acquiring, or enforcing these restrictions;
- Clarify and simplify the definition of APRs to enable the program to tailor the specific terms of each restriction to the particular circumstances of each property involved.

Benefits

By strengthening the durability of conservation restrictions, this legislation will enhance innovative land protection across the Commonwealth. Enabling land trusts and other eligible organizations to co-hold APRs with the Department of Agricultural Resources will assist the Department in negotiating, funding, and enforcing these restrictions, and help foster public-private partnerships that are often necessary to complete such projects.

The use of conservation restrictions as a land protection tool benefits private property owners, municipalities, and the Commonwealth:

- The Internal Revenue Service allows a property owner to deduct from taxable income the value of a donated restriction (up to 30 percent of adjusted gross income in the year of the gift, and up to five successive years thereafter) as a charitable donation;
- Land remains on municipal tax rolls and can be passed on to future generations;
- The Commonwealth saves between 10-50% of the full price of protecting a parcel of land through a CR vs. fee simple acquisition;
- Special qualities and features of the land are preserved, including aquifer or drinking water sources, agricultural soils, scenic views, historic sites, and biodiversity.

Conservation restrictions could play an important role in protecting Massachusetts’ most dominant land cover type—forests. Massachusetts has over three million acres of forested land. Nearly 76% of our forestland is privately owned. The maturing forest of Massachusetts is being harvested with varying intensity, favoring a fragmented landscape of even-aged stands. By acquiring development and timber rights to the best growing forests, the Commonwealth could offer current owners the income they seek, while generating sustainable harvests and protecting water supplies and wildlife habitats.

For more information about the bill, contact Jennifer Ryan, Mass Audubon’s Assistant Director for Legislative Affairs, at 617-523-8448 or jryan@massaudubon.org.

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