

Massachusetts PACE Enabling Laws

Mass. Ann. Laws ch. 20, §§ 23 to 26
Current through 2021

Chapter 20 Department of Food and Agriculture

§ 23. Agricultural Preservation Restrictions.

(a) The secretary of 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 pursuant to sections 1 to 5, inclusive, of chapter 61A. The commissioner of agricultural resources may, from funds appropriated to carry out this section or from funds received from other sources, pay an agricultural land owner for a project submitted by a city or town and approved by the agricultural lands preservation committee established in section 24 such amount as is determined by the committee to be equitable in consideration of anticipated benefits from such project but not to exceed the difference between the fair market value of the land and the fair market value of the land restricted for agricultural purposes pursuant to this section. Title to agricultural preservation restrictions shall be held in the name of the commonwealth; provided, however, that a city or town in which such land is located which provides assistance satisfactory to the committee including, but not limited to, providing funds or portions thereof toward the purchase of such restriction, providing legal services and the enforcement of the preservation restriction shall hold title to such land jointly with the commonwealth. Projects shall be administered by agricultural commissions or conservation commissions in cities and towns in which such commissions have been established or, in a city, by the city council or its delegated agency subject to the city charter or, in a town, by the board of selectmen or its delegated agency. The commissioner of agricultural resources shall, subject to the approval of the agricultural lands preservation committee established in section 24 and in consultation with the board of agriculture established in section 1, establish policies and promulgate regulations for the management and oversight of the program to assist the commonwealth in the acquisition of agricultural preservation restrictions. The commissioner shall promulgate regulations pursuant to this section in accordance with section 2 of chapter 30A, including the requirement that a public hearing be held. The regulations shall, at a minimum establish: (i) criteria for when the department may exercise a right of first refusal, option to purchase at fair market agricultural value or other similar right contained in an agricultural preservation restriction as held by the commonwealth; (ii) a process and guidelines for conferences as required in this subsection; and (iii) a process for waiver requests pursuant to subsection (d).

As a condition of an agricultural preservation restriction acquired under this section, the owner of land subject to such a restriction held by the commonwealth shall be required to participate in a conference with the department to discuss, and for the department to explain, the terms and conditions of the agricultural preservation restriction. If the landowner intends to sell the land subject to the restriction, the landowner, department and proposed purchaser shall, prior to submission of the requisite notice of intent to sell, participate in a conference to discuss the requirements under this section and the requirements of any requests for waivers of the department's right to exercise or assign a right to acquire an interest in land through a right of first refusal, option to purchase at fair market agricultural value or other similar right contained in the agricultural preservation restriction. A conference held in accordance with this section shall occur on the parcel of land subject to the restriction under consideration or in a manner and time agreed upon by the landowner, proposed purchaser of the land

and the department. Following submission of a notice of intent to sell, the department may communicate directly with the landowner or seek an additional conference with the landowner and proposed purchaser to clarify any element of the landowner's notice of intent to sell and waiver request.

The department shall review, once every 3 years and in consultation with the board of agriculture and the agricultural lands preservation committee, all existing guidance, policies, procedures and regulations relative to the management and oversight of the program pursuant to this section and propose updates to the guidance, policies, procedures or regulations that are necessary to improve and modernize the management of the program. This review shall include regional public hearings to assess the effectiveness of the program and existing guidance, policies, procedures and regulations. The department shall make a good faith effort to mail a copy of any guidance, policies, procedures or regulations, whether proposed or promulgated under this section, to all owners of land subject to agricultural preservation restrictions held by the commonwealth not less than 21 days prior to the date of a public hearing.

(b) Notwithstanding any general or special law to the contrary, the department of agricultural resources, with the approval of the co-holder, if any, in its sole discretion, may grant to any owner of land subject to an agricultural preservation restriction held by the commonwealth a nonassignable special permit allowing nonagricultural activities to occur on the agricultural preservation restriction land if: (i) the land is being actively utilized for full-time commercial agriculture; (ii) the permit is for a maximum of 5 years duration which may, at the discretion of the department, be renewed; and (iii) the grant of a special permit will not defeat or derogate from the intent and purposes of retaining the land for agricultural use and preserving the natural agricultural resources of the commonwealth and that the agricultural preservation restriction owner meets all requirements pertaining to special permits contained in the agricultural preservation restriction agreement form utilized by the commonwealth at the time of application for the special permit. In making the determination, the department shall consider the long-term productivity of the agricultural resource and the sustainability of the farm enterprise.

[Subsection (c) effective until August 1, 2019. For text effective August 1, 2019, see below.]

(c) Any applicant aggrieved by a decision of the department denying a request for a certificate of approval for agricultural activities or structures or for a special permit authorized in subsection (b), may request an adjudicatory hearing under chapter 30A before the agricultural lands preservation committee. The determination of the department shall contain a notice of a right to request a hearing and may specify a time limit, not to exceed 21 days, within which the applicant may request a hearing before the committee under said chapter 30A. If a timely request is received, the committee shall, within a reasonable time, hold a hearing in compliance with said chapter 30A. The committee shall designate a hearing officer to preside over the hearing, to assemble an official record of the hearing and to render a written decision which shall be submitted to the committee. The committee shall make the final decision.

[Subsection (c) as amended by 2018, 154, Sec. 17 effective August 1, 2019. See 2018, 154, Sec. 109. For text effective until August 1, 2019, see above.]

(c) Any applicant aggrieved by a decision of the department denying a request for a certificate of approval for agricultural activities or structures or for a special permit authorized in subsection (b), or any landowner of land subject to an agricultural preservation restriction who is subject to and aggrieved by a decision of the department to exercise or assign a right to acquire an interest in land through an option to purchase at fair market agricultural value, a right of first refusal or other similar right for land subject to an agricultural preservation restriction as held by the commonwealth on their land may

request an adjudicatory hearing under chapter 30A before the agricultural lands preservation committee. The determination of the department shall contain a notice of a right to request a hearing and may specify a time limit, not to exceed 21 days, within which the applicant may request a hearing before the committee under said chapter 30A. If a timely request is received, the committee shall, within a reasonable time, hold a hearing in compliance with said chapter 30A. The committee shall designate a hearing officer to preside over the hearing, to assemble an official record of the hearing and to render a written decision which shall be submitted to the committee. The committee shall make the final decision.

[Paragraph added in subsection (c) by 2018, 154, Sec. 18 effective August 1, 2019. See 2018, 154, Sec. 109.]

The department shall notify the aggrieved landowner in writing by certified mail of the determination not more than 3 business days after a determination made by the department under this subsection to exercise or assign a right of first refusal, an option to purchase at fair market agricultural value or other similar right contained in the agricultural preservation restriction. The department's notice shall include notice of a right to request a hearing at which the aggrieved landowner may, not more than 10 business days after receipt of such determination by the department, request a hearing before the committee under chapter 30A. If a timely request is received, the committee shall, within a reasonable time, hold a hearing in compliance with said chapter 30A. The committee shall designate a hearing officer to preside over the hearing, to assemble an official record of the hearing and to render a written decision that shall be submitted to the committee. The committee shall make the final decision not more than 15 business days after holding a hearing. If the time period established in the agricultural preservation restriction for the department to exercise its right of first refusal, option to purchase at fair market agricultural value or other similar right, together with the time period established for the department to complete the underlying land sale if the above rights are assigned, is less than 90 days in total, the landowner's right to a hearing is conditioned upon written consent by the landowner to extend the time period to allow for completion of the hearing and for the department to finalize a sale should the department prevail in the hearing. Such consent shall have the effect of modifying the time periods set forth in the recorded agricultural preservation restriction but shall not affect the parties' rights in any other manner.

[Subsections (d) to (f) added by 2018, 154, Sec. 19 effective August 1, 2019. See 2018, 154, Sec. 109.]

(d) The department shall waive its rights under this section to exercise or assign a right to acquire an interest in land through a right of first refusal, an option to purchase at fair market agricultural value or other similar right contained if a landowner of land subject to an agricultural preservation restriction held by the commonwealth has received a good faith offer, including a certified copy of an executed purchase and sale agreement, for a fixed consideration payable upon delivery of the deed for land subject to an agricultural preservation restriction from a farmer who, at a minimum: (i) has engaged in active commercial agriculture for not less than 2 years immediately prior to the date of the request for a waiver under this section; (ii) submits a proposed farm business plan to the department that includes the proposed purchase price and demonstrates how the buyer will continue to engage in commercial agriculture to retain and use the land primarily and directly for agricultural purposes pursuant to sections 1 and 2 of chapter 61A and preserve the natural agricultural resources for a period of not less than 5 years after the date of sale; and (iii) has no prior record of a violation of the written agreement or terms of any agricultural preservation restriction held by the commonwealth; provided, however, that the department shall require any proposed farm business plan submitted pursuant to clause (ii) to include a written justification for the proposed purchase price if the price proposed for the purchase of the subject land is 20 per cent or more than the fair market agricultural value of the land; provided further, that the department may waive the requirements of clause (iii) if the violation is deemed minor by the department; and provided further, that any person, party or entity who is subject to and

aggrieved by a decision of the department not to waive its rights under this section may appeal to the agricultural lands preservation committee pursuant to the process set forth in subsection (c).

The department, in consultation with the agricultural lands preservation committee and the board of agriculture, shall establish benchmarks and criteria to be used to evaluate and measure a farm business plan submitted by a farmer as part of any waiver request in accordance with this section.

(e) Where an agricultural preservation restriction acquired and held by the commonwealth gives the department the authority to exercise or assign a right to acquire an interest in land through a right of first refusal, an option to purchase at agricultural value or other similar right, the landowner shall have the right to withdraw the landowner's notice of intent to sell at any point prior to the department's exercise or assignment of the option to purchase at agricultural value or right of first refusal. A landowner's decision to withdraw a notice of intent to sell shall not affect a landowner's right or obligation to submit to the department any future offer to purchase said land.

(f) Nothing in this section shall be construed as requiring the department to include a right of first refusal, an option to purchase at agricultural value or other similar right when acquiring an agricultural preservation restriction.

History: Amended 2018, 154, §§ 15, 16, effective July 1, 2018; 2018, 154, §§ 17–19, effective August 1, 2019.

§ 24. Agricultural Lands Preservation Committee.

(a) There shall be an agricultural lands preservation committee in the department of agricultural resources. The committee shall consist of the commissioner of agricultural resources, who shall be the chair, the secretary of environmental affairs, the director of housing and community development, an appointee from the Center for Agriculture, Food and the Environment at the University of Massachusetts at Amherst, the chair of the board of agricultural resources or their respective designees and 6 persons to be appointed by the governor, 4 of whom shall be owners and operators of farms within the commonwealth, 1 of whom shall be a representative of a farm advocacy organization and 1 of whom shall be a representative of a land trust organization. Members appointed by the governor shall receive \$50 for each day or portion of a day spent in the discharge of their official duties not to exceed \$600 annually and shall be reimbursed for the necessary expenses incurred. The state conservationist of the United States Department of Agriculture Natural Resources Conservation Service shall serve as a nonvoting member.

(b) The committee shall evaluate and accept or reject projects submitted by municipalities. In making such evaluation, the committee shall consider at least the following:

- (i) the suitability of land as to soil classification and other criteria for agricultural use;
- (ii) the fair market value of the land and the fair market value of the land when used for agricultural purposes as determined by independent appraisals; and
- (iii) the degree to which the acquisition would serve to preserve the agricultural potential of the commonwealth.

(c) The commissioner of agricultural resources, subject to the approval of the committee, may establish such rules and regulations as may be deemed necessary to carry out this section. The committee may also provide advice to the commissioner on department policies.

(d) Each member of the committee appointed by the governor shall be appointed for a term of 4 years and shall serve until the member's successor is appointed and qualified. A person appointed to fill a vacancy shall serve for the remainder of the unexpired term of the member creating the vacancy. Members shall be eligible for reappointment.

History: Amended 2018, 154, § 20.

§ 25. Agricultural Lands Preservation Committee; Annual Report.

The agricultural lands preservation committee shall prepare an annual report. The report shall include the number and geographic distribution of applications accepted and rejected, the acreage and costs of purchases, and such other information as will enable the program to be evaluated.

§ 26. Assessment of Restricted Lands.

Land under agricultural preservation restrictions, while actively devoted to agricultural, horticultural or agricultural and horticultural use as defined in sections 1 to 5, inclusive, of chapter 61A, shall be assessed for general property tax purposes at values no greater than those determined by the methods and provisions of section 10 of said chapter 61A.

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter20>