

New Hampshire PACE Enabling Laws

N.H. Rev. Stat. Ann. §§ 432:18 to 432:35
Current through Chapter 38 of the 2020 Regular Session

TITLE XL – AGRICULTURE, HORTICULTURE AND ANIMAL HUSBANDRY

CHAPTER 432 – SOIL CONSERVATION AND FARMLAND PRESERVATION

Acquisition of Agricultural Land Development Rights

432:18 Definitions.

In this subdivision:

I. "Agricultural land development rights" means the rights of the fee simple owner of agricultural land to construct on, sell, lease or otherwise improve the agricultural land for uses that result in rendering such land no longer suitable for agricultural use. Such development rights may be severed from the fee simple right to constitute a restriction for the preservation of the agricultural land as defined in paragraphs II and II-a.

II. "Agricultural preservation restriction" means the restraint placed on the development rights of agricultural land, whether 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 which is appropriate to retaining land or water areas predominantly in their agricultural use, to prohibit or limit (1) construction or placement of buildings except those used for agricultural purposes or for a dwelling used for family living by the landowner, his or her immediate family or employees; (2) excavation, dredging, or removal of loam, sod, peat, gravel, soil, rock, or other mineral substance in such a manner as to adversely affect the land's future agricultural potential; or (3) other acts or uses detrimental to such retention of the land for agricultural use. Agricultural preservation restriction does not include agricultural restricted grants as defined in paragraph II-a.

II-a. "Agricultural restricted grant" means a grant given to a landowner by the department of agriculture, markets, and food for a limited time set by the parties with financial or technical assistance provided by the department in return for guarantees of continued farm use of the property for a minimum specified time period.

III. "Agricultural use" means use of land for agriculture, farming, dairying, pasturage, horticulture, floriculture, or animal or poultry husbandry.

IV. "Commissioner" means the commissioner of the department of agriculture, markets, and food.

V. "Committee" means the agricultural lands preservation committee.

VI. "Conservation commission" means the conservation commission established by a city or town pursuant to RSA 36-A.

VII. "Governing body" means, in the case of a city, the city council or the board of aldermen or, in the case of a town, the board of selectmen.

VIII. "Municipality" means any city or town.

IX. "Site" means a specific land area for agricultural purposes in which agricultural land development rights including agricultural restricted grants are acquired in order to preserve land suitable for agricultural production.

History: 1985, 72:1. 1995, 130:4, eff. July 23, 1995. 2010, 238:1-3, eff. July 1, 2010.

432:19 Agricultural Lands Preservation Committee; Members, Appointment, Term.

I. There is hereby established an agricultural lands preservation committee which shall function within the department of agriculture, markets, and food.

II. The committee shall consist of 7 voting members and 2 nonvoting members, to be appointed as follows:

- (a) The commissioner of the department of agriculture, markets, and food who shall be chairman;
- (b) The commissioner of the department of natural and cultural resources, or his designee;
- (c) The director of the office of strategic initiatives, or his designee;
- (d) The secretary of the agricultural advisory board;
- (e) 3 members, 2 of whom are owners and operators of farms in the state, who shall be appointed by the governor with the advice and consent of the council for 3 years. Of the initial appointees, one shall hold office for one year, one for 2 years and one for 3 years;
- (f) The dean of the college of life sciences and agriculture of the university system of New Hampshire, or his designee, who shall serve as a nonvoting member; and
- (g) The New Hampshire state conservationist of the United States Department of Agriculture Natural Resources Conservation Service, or his designee, who shall serve as a nonvoting member.

III. Members of the committee who are not state employees shall be paid \$25 a day, each, for such time as they are actually engaged in the work of the committee. All members shall be paid their actual expenses incurred as a result of such work and shall be paid mileage at the same rate as state employees.

IV. A majority of the voting members of the committee shall constitute a quorum.

History: 1985, 72:1. 1995, 130:4; 206:2, eff. Aug. 11, 1995. 2003, 319:9, eff. July 1, 2003. 2004, 257:44, eff. July 1, 2004. 2017, 156:64, eff. July 1, 2017.

432:20 Duties of the Committee.

I. The committee shall evaluate and accept or reject sites proposed by a landowner pursuant to RSA 432:22. The committee shall consider in their evaluation, at a minimum, the following:

- (a) The degree to which the acquisition would serve to preserve the agricultural potential of the state;
- (b) The suitability of land as to soil classification and other criteria for agricultural use; and
- (c) The fair market value of such land pursuant to RSA 75:1 as determined by an independent appraisal and the fair market value of such land when used for agricultural purposes which shall be the top of the value range for horticultural crops as established by the current use board. The landowner shall bear the expense of the appraisal of the land to be acquired.

II. [Repealed.]

History: 1985, 72:1. 1986, 15:2. 1991, 281:24, eff. Aug. 17, 1991. 2015, 259:31, IV, eff. July 1, 2015.

432:21 Duties of the Commissioner.

The commissioner shall, with the advice and consent of the committee, and in accordance with RSA 541-A:

I. [Repealed.]

II. Adopt rules relative to criteria to define and classify agricultural lands.

III. Adopt rules relative to procedures for the purchasing of agricultural land development rights by the state.

IV. Adopt rules relative to procedures for the release of a site from agricultural preservation restrictions.

V. Fulfill any duties delegated by the committee pursuant to this subdivision.

VI. Adopt rules relative to procedures for granting financial or technical assistance for aid for the creation of agricultural restricted grants.

History: 1985, 72:1. 1986, 15:3, eff. April 18, 1986. 2010, 238:4, eff. July 1, 2010.

432:22 Procedure for Administration.

I. Acquisition of agricultural land development rights shall be conducted in cooperation with a landowner upon review pursuant to this section. Any proposal for designating a site as an agricultural preservation restriction area or a site for an agricultural restricted grant shall be submitted by the landowner to the committee for approval. Notwithstanding RSA 432:23, approval of a site for an agricultural restricted grant shall not be the only cause for a current use valuation as described in RSA 79-A.

II. The committee shall determine the amount due to the affected agricultural landowner and authorize the commissioner to pay such amount to the owner. Agricultural land development rights purchased pursuant to this section shall be held in the name of the state of New Hampshire.

III. The determination of such amounts shall be equitable in consideration of anticipated benefits from the proposed site but not to exceed the difference between the fair market value of such land and the fair market value of such land restricted for agricultural purposes pursuant to this subdivision.

IV. The rights acquired pursuant to the purchase agreement shall not be sold or otherwise conveyed to a third party without consent of the landowner, nor does such purchase grant the public any right of access or right of use of the affected property.

V. The committee shall view each parcel subject to agricultural preservation restriction or an agricultural restricted grant not less than once every 2 years to assure that its use complies with law and the rules of the committee. The committee may delegate responsibility for monitoring of the agricultural preservation restriction to the conservation commission in the municipality, or to the conservation district, in which the parcel is situated. Such commission or district shall submit a report of its inspection to the committee in a timely manner.

History: 1985, 72:1. 1986, 15:4, eff. April 18, 1986. 2010, 238:5, 6, eff. July 1, 2010.

432:23 Assessments.

Land designated as an agricultural preservation site and utilized for agricultural production shall be assessed for general property tax purposes at values no greater than those determined to be the fair market value for such land as determined by the current use board established by RSA 79-A:3.

History: 1985, 72:1. 1991, 281:25, eff. Aug. 17, 1991.

432:24 Release.

I. Agricultural preservation restrictions shall be in perpetuity except as released pursuant to this section and RSA 432:25. Agricultural restricted grants shall run in accordance with the agreement between a landowner and the department of agriculture, markets, and food except as terminated pursuant to this section and RSA 432:25. All customary rights and privileges of ownership shall be retained by the owner including the right to privacy and the right to carry out all regular agricultural practices which are not prohibited by RSA 432:18, II.

II. Agricultural preservation restrictions and agricultural restricted grants may be released or terminated by the committee if the site is no longer suitable for agricultural purposes. An owner of an agricultural preservation site may request the committee's approval to release the restriction for the public good. Prior to the release of the agricultural land development rights by the committee, a public hearing shall be conducted in the municipality in which the site is located. A notice of said hearing shall specify the grounds for the hearing as well as the date, time, and place, and at least 14 days' notice of the time and place of such hearing shall be published in a paper of general circulation in the municipality. A legal notice of the hearing shall also be posted in at least 3 public places in such city or town. The 14 days shall not include the day of publication nor the day of the meeting, but shall include any Saturdays, Sundays, and legal holidays within said period. At least 2 committee members shall sit on the hearing panel.

III. Development rights of agricultural land purchased with public funds may be released upon repayment by the landowner of a reasonable value thereof which shall not be less than the difference between fair market value of such land at the time of such release and the fair market value of such land restricted for agricultural purposes at the time that development rights were acquired.

History: 1985, 72:1. 1986, 15:5, eff. April 18, 1986. 2010, 238:7, eff. July 1, 2010.

432:25 Development Rights Acquired by Public Bodies.

I. Development rights of agricultural lands may be acquired by any governmental body or charitable corporation or trust which has the authority to acquire interests in land. The restrictions arising from the acquisition of the development rights may be enforced by injunction or other proceeding. Representatives of the holder shall be entitled to enter such land in a reasonable manner and at reasonable times to assure compliance with the restriction.

II. The restrictions may be released, in whole or in part, by the holder for consideration in an amount determined by the governmental body or charitable corporation or trust that purchased the development rights. Prior to release of restriction by a governmental body, a public hearing shall be conducted in the municipality in which the site is located. A notice of said hearing shall specify the grounds for the hearing as well as the date, time and place, and at least 14 days' notice of the time and

place of such hearing shall be published in a paper of general circulation in the municipality. A legal notice of the hearing shall also be posted in at least 3 public places in such city or town. The 14 days shall not include the day of publication nor the day of the meeting, but shall include any Saturdays, Sundays and legal holidays within said period.

History: 1985, 72:1. 1986, 15:7, eff. April 18, 1986.

432:26 Public Interest.

Prior to action by a governmental body to acquire the development rights or release or approve the agricultural preservation restriction, the body shall consider the public interest in such agricultural preservation, any national, state, regional or local program in furtherance thereof, and any state, regional or local comprehensive land use plan.

History: 1985, 72:1, eff. July 1, 1985.

432:27 Recording.

I. Acquisition of the developmental rights or release of the preservation restrictions on agricultural land shall be evidenced by certificates issued by the commissioner and shall be recorded pursuant to RSA 477:3-a in the appropriate registry of deeds by the commissioner. Recording costs shall be paid by the affected landowner.

II. Municipal planning boards and regional planning commissions established pursuant to RSA 673 or RSA 36 shall be notified in writing by the commissioner of the acquisition or release of an agricultural preservation site which shall be duly noted in the master plan of the municipality or region.

History: 1985, 72:1. 1986, 15:6, eff. April 18, 1986.

432:28 Covenants Already in Force Relating to the Affected Site.

Any prior right, easement, privilege, restriction or condition relative to a designated site which then becomes subject to an agricultural preservation restriction shall remain enforceable. The restriction shall be subject to the prior covenants except upon the express release of the covenants due to the acquisition of the site's agricultural land development rights. If prior covenants are released upon the acquisition of the agricultural land development rights and the agricultural preservation restriction is then released pursuant to RSA 432:24 or RSA 432:25, the covenants shall be revived to the same status as prior to the acquisition of the development rights.

History: 1985, 72:1, eff. July 1, 1985.

432:29 Land for Public Use; Eminent Domain, Easements by Public Utilities.

I. Any powers granted by general or special law to acquire land for public uses by purchase, gift or eminent domain shall not be diminished; provided that alternative land areas are considered.

II. Public utility companies may obtain easements by eminent domain on sites designated agricultural preservation restriction areas for the purpose of utility services; provided, however, the utility (1) gives thorough consideration to alternative areas before such land can be taken; (2) guarantees the minimum practicable interference with agricultural operations with respect to width of easement, pole location

and other pertinent matters; (3) obtains all necessary licenses, permits, approvals and other authorizations from the appropriate government agencies; and (4) compensates the landowner in the same manner and at the same fair market value as if the land were not designated as an agricultural preservation site.

III. The committee shall be consulted prior to the taking of any property pursuant to this section. If the committee determines there was a taking contrary to the provisions of this section, it shall have the right of appeal to the superior court on behalf of the landowner.

History: 1985, 72:1, eff. July 1, 1985.

432:30 Repealed by 2018, 204:2, eff. July 1, 2018.

432:30-a Special Account.

There is established a separate account to which shall be credited all funds appropriated or acquired to provide financial and technical assistance associated with this subdivision. This shall be a nonlapsing account, and funds in said account are hereby appropriated for the purpose of this subdivision.

History: 2019, 346:194, eff. July 1, 2019.

432:31 Contributions.

The committee is authorized to apply for and accept public or private grants, gifts, or donations of any kind and to use and dispose of money, services and property received from such contributions for the purposes of this subdivision.

History: 1985, 72:1, eff. July 1, 1985. 2010, 238:9, eff. July 1, 2010.

432:31-a Governor and Council Approval.

The purchase of any agricultural land preservation restrictions or development rights in the name of the state of New Hampshire or their release, in whole or in part, by the state pursuant to the provisions of this subdivision shall be approved by governor and council.

History: 1985, 304:3, eff. Aug. 13, 1985.

432:32 Agricultural Operation.

"Agricultural operation" when used in this subdivision includes any farm, agricultural or farming activity as defined in RSA 21:34-a.

History: 1985, 72:1, eff. July 1, 1985.

432:33 Immunity from Suit.

No agricultural operation shall be found a public or private nuisance as a result of changed conditions in or around the locality of the agricultural operation, if such agricultural operation has been in operation for one year or more and if it was not a nuisance at the time it began operation. This section shall not

apply when any aspect of the agricultural operation is determined to be injurious to public health or safety under RSA 147:1 or RSA 147:2.

History: 1985, 72:1, eff. July 1, 1985.

432:34 Negligent or Improper Operations.

The provisions of this subdivision shall not apply if a nuisance results from the negligent or improper operation of an agricultural operation. Agricultural operations shall not be found to be negligent or improper when they conform to federal, state and local laws, rules and regulations.

History: 1985, 72:1, eff. July 1, 1985.

432:35 Limits.

Nothing contained in this subdivision shall be construed to modify or limit the duties and authority conferred upon the department of environmental services under RSA 485 or RSA 485-A or the commissioner of agriculture, markets, and food under any of the chapters in this title.

History: 1985, 72:1. 1989, 339:27. 1995, 130:5. 1996, 228:108, eff. July 1, 1996.