



DEMOCRACY IN ACTION

**SENATOR JO COMERFORD**

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## **An Act Investing in Natural and Working Lands**

### **What's the problem?**

There is no scenario in which we can prevent runaway global warming if we keep losing our natural and working lands. To stem the tide of global environmental degradation, at the COP26 climate change summit [over 100 countries representing over 85% of the world's forests pledged to halt deforestation by 2030](#).

However, Massachusetts is [losing ground, according to MassAudubon](#). From 2012 to 2017 the average rate of land development in Massachusetts increased slightly from 13 to 13.5 acres per day, and while land conservation offset some of these losses, their report estimates approximately 29,929 acres of forest loss and 24,700 acres of natural land converted to development during that five-year period.

We can't keep going in this direction. When natural and working lands like forests or farmlands are developed, it doesn't just impact biodiversity, local agriculture, and public and environmental health, but it reduces our ability as a Commonwealth to fight climate change now and going forwards. Although our climate modeling relies on increased carbon sequestration from natural and working lands, we don't have laws or funding that properly protects and values these lands for the ecosystem services and climate change mitigation they provide.

### **What's the solution?**

The Commonwealth should have a goal of not losing forests and farmland on account of the many benefits those lands provide including climate change resilience. This bill would give the Commonwealth that mission and ensure that state law and state agencies work to prevent the development of forests and farmland, while respecting local land use and planning authority. The bill would require the Commonwealth to value forests and farmland for the totality of the services they provide, including their work in the fight against climate change.

## **SECTION BY SECTION: S.448 - An Act investing in natural and working lands**

**Section 1** defines the term nature services.

**Section 2** defines the term reforestation.

**Section 3** adds multiple new sections to the state's existing greenhouse gas and climate change laws, [Chapter 21N](#).

It adds a new **Section 12**, which gives the Commonwealth and its agencies the mission of preventing the loss of farmland and forest land. An [Executive Order](#) from 1981 laid this framework with a focus on state-owned agricultural lands, but this section would codify and expand that mission to all of the forested land and farmland in the Commonwealth.

It adds a new **Section 13**, which would establish a local opt-in program under the Executive Office of Energy and Environmental Affairs (EEA) called Farm and Forest Friendly Communities. The program is designed to incentivize municipalities to make land use and planning decisions and bylaws that further the state's overall goal of preventing the loss of farmland and forests. This section specifies that the program would receive funding through the Global Warming Solutions Trust Fund and the federal Inflation Reduction Act.

Section 13 also sets eligibility criteria for the program, including requiring municipalities to develop a natural resource protection zoning ordinance, adopt bylaws preserving tree canopy, have an empowered local agricultural commission and adopt a right-to-farm bylaw. This section also instructs EEA to provide technical and financial assistance to municipalities that qualify for the program to finance the costs of studying, designing and implementing the local ordinances and bylaws required by the program. This section also instructs EEA to coordinate with the Department of Revenue to provide members of the program a higher rate of reimbursement under the state-owned-land PILOT program, as well as an annual credit for each agricultural preservation restriction (APR) in the municipality.

This section also requires EEA to ensure that municipalities that have been accepted into the program remain in compliance with program requirements.

**Section 4** directs the state’s Environmental Policy Act office ([MEPA](#)) to determine a review threshold, above which projects engaging in a certain level of forest clearing or farmland conversion would be required to undergo an environmental impact review, and also to develop methodologies for quantifying the greenhouse gas emissions implication of land clearing. This section also requires that the review threshold set by MEPA further the goals of the legislation, and requires MEPA to solicit public comment before finalizing the regulations.

**Section 5** adds tracking of the program’s cost, participation rates and results to the 5-year emissions reduction reports required by the [Next Generation Climate Law](#). This section also requires recurring reviews of incentive rates paid for land conservation, including PILOT payments, and specifies these rates should adjust with the value of the land and further the goals of the legislation to prevent the loss of farmland and forested land.

**Section 6** requires the Department of Energy Resources to make recommendations to the legislature on a successor to the SMART solar incentive program, and requires DOER to consider the benefits of distributed generation facilities, time-differentiated rates, and siting these energy sources in a way that avoids or minimizes impacts to natural and working lands and waters as it makes those recommendations.

**Bill text:**

*An Act Investing in Natural and Working Lands*

SECTION 1. Section 1 of chapter 21N of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the definition of “Nature-based solutions” the following definition:-

“Nature Services”, the processes and properties of both natural and human-managed ecosystems that provide human societies with benefits and resources of fundamental value. These services include the provision of resources essential for life such as food, clean water, clean air, shelter, and medicines as well as stabilizing environmental processes such as purification of air and water, flood control, and nutrient cycling.

SECTION 2. Said section 1 of said chapter 21N, as so appearing, is hereby further amended by inserting after the definition of “Person” the following definition:-

“Reforestation”, the process of replanting trees in areas depleted by natural or unnatural disturbances such as wildfires, natural disasters, drought, insects, disease, logging, mining, agricultural clearing, and development.

SECTION 3. Chapter 21N of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by adding the following sections:-

Section 12. (a) The commonwealth shall undertake actions under this chapter with the goal of preventing the loss of farmland, forest lands and trees and promoting equitable access to nature services. The commonwealth shall seek to avoid, minimize, and mitigate the impact of the loss or conversion of farmland, forest lands, and trees to promote the full ecological, agricultural, natural, public health, and economic benefits of the land.

(b) All relevant state agencies shall implement regulations under this chapter in alignment with this section and its policies, including:

(i) Funds and federal grants administered by the commonwealth shall not be used to encourage the conversion of farmland or forested land to other uses when feasible alternatives are available.

(ii) Agency actions shall encourage the protection of farmland or forest land by avoiding, minimizing, and mitigating against the conversion of land to non-agricultural or non-forest uses, and by promoting soil, tree and water conservation practices.

(iii) Agencies controlling state-owned land or undertaking projects that result in the conversion of forest land or land suitable for agricultural use shall coordinate with the executive office of environmental affairs and shall conduct permitting and mitigation in accordance with the goals of this section.

Section 13. (a) The secretary of the executive office of energy and environmental affairs shall establish a municipal opt-in farm and forest-friendly communities program.

(b) The program shall advance state policy to: (1) prevent the loss of working farmlands, forest lands and trees; (2) promote carbon sequestration and storage capacity; (3) promote reforestation; (4) promote nature services, particularly in environmental justice communities; and (5) increase food and agricultural production.

(i) The secretary shall adopt rules, regulations, and guidelines for the administration, oversight, accountability, and enforcement of this section, including, but not limited to,

establishing eligibility criteria, funding priorities, application forms and procedures, and reporting requirements.

(ii) The secretary may develop and implement the farm and forest-friendly communities program as a stand-alone program or combine the program with other municipal assistance programs related to climate adaptation, resiliency or mitigation.

(c) The secretary shall collect revenues and distribute funds to support eligibility requirements under subsection (d) as provided in this section. Funding for the farm and forest-friendly communities program in any single fiscal year shall be available, without further appropriation, from sources including, but not limited to, the Global Warming Solutions Trust Fund established in section 35GGG of chapter 10 as well as the federal Inflation Reduction Act of 2022; and any land management and restoration grant, loan, and incentive programs administered by the executive office of energy and environmental affairs.

(d) To qualify as a farm and forest-friendly community, a municipality or other local governmental body shall comply with eligibility requirements. The secretary shall set eligibility requirements including adoption of natural resource protection zoning ordinances or by-laws; and requiring municipalities to adhere to a majority of the following, as chosen by the municipality: (1) adoption of a municipal tree retention and replacement by-law or ordinance; (2) adoption of ordinances or by-laws to expand or conserve natural tree canopy; (3) a local or regional agricultural commission that has the ability to comment on related matters; (4) including agriculture as a category on all master plans, open space plans, and other relevant land use plans; and (5) adoption of a municipal right-to-farm by-law; provided, that ordinances and by-laws enacted under this subsection may exempt the development of affordable housing.

(i) Eligibility requirements set under this section shall encourage and assist participating municipalities to achieve the goals under subsection (a) of section 12.

(ii) The secretary may waive specified requirements based on a written finding that, due to unusual circumstances, a municipality cannot reasonably meet the requirements and that the municipality has committed to alternative measures that advance the purposes of the farm and forest-friendly communities program in a way that aligns with program requirements. The secretary may also waive requirements based upon municipal income factors or upon environmental justice criteria that make the program requirements overly burdensome for a particular municipality. The secretary may adopt alternative eligibility requirements that provide opportunities to those municipalities to achieve the goals of the program.

(e) The secretary shall accept applications from municipalities annually. Applications shall be noncompetitive and shall be accepted or denied based only upon whether municipalities have met the eligibility requirements.

(f) The secretary shall provide technical and financial assistance, including incentive payments, grants, and loans, to municipalities that qualify for and opt-in as a farm and forest-friendly community under this section. These incentives, grants, and loans may be used to finance all or a portion of the costs of studying, designing, and implementing local ordinances or bylaws to prevent the loss of farmland, forest land and trees. Upon acceptance into the farm and forest-friendly communities program, grants, incentives, and loans may be provided annually.

(g) The secretary shall, in coordination with the division of local services within the department of revenue, annually provide municipalities participating in the program a higher rate of reimbursement in lieu of taxes on state-owned land under sections 13 to 17, inclusive, of chapter 58 of the General Laws, as determined by the secretary and not less than 5 per cent of the municipality's reimbursement.

(h) The secretary shall, in coordination with the commissioner of agricultural resources and the division of local services within the department of revenue, annually provide municipalities participating in the program an incentive payment for each parcel of land restricted for agricultural purposes under section 23 of chapter 20 of the General Laws.

(ii) The secretary shall set requirements for recertification to ensure compliance with this section following the first year of acceptance, and 5 years after a municipality is accepted, and every 5 years thereafter. The requirements shall include, but are not limited to, submission of documentation on: the amount of farm and forest land retained; the amount of tree canopy preserved or increased; the by-laws and ordinances enacted to comply with this program, demonstrating those by-laws or ordinances are currently in effect; and the involvement of a local or regional agricultural commission. If a community used alternative measures per a waiver from the secretary, the community shall be required to submit documentation of such alternative measures.

If a municipality was granted a waiver allowing alternative eligibility requirements, the ability of said municipality to comply with the eligibility requirements in subsection (d) shall be reassessed at each 5 year interval. If the secretary determines the municipality has developed the capacity to meet the eligibility requirements of subsection (d), the waiver will not be extended. This section does not preclude the secretary from determining a municipality is no longer able to meet the requirements of subsection (d) and issue said community a waiver to remain in the program, provided said community demonstrates the presence of equally effective alternative measures as required per subsection (ii).

SECTION 4. (a) Not later than July 1, 2024, the environmental policy act office shall determine a review threshold which would require projects engaging in a certain level of forest clearing or farmland conversion to undergo an environmental impact review. The review threshold shall further the goals under subsection (a) of section 12 of chapter 21N of the General Laws.

(b) Not later than July 1, 2024, the environmental policy act office shall develop methodologies for quantifying the greenhouse gas emissions implications of land clearing and farmland development and potential options for mitigation.

(c) Six months before finalizing the review threshold and methodologies under subsections (a) and (b), the environmental policy office shall publish a proposed draft review threshold and proposed draft methodologies and solicit public comment on the proposals. The office shall also solicit comments from the committee on environment, natural resources and agriculture. The committee may hold a public hearing on the submitted review threshold and methodologies.

SECTION 5. (a) The roadmap plans and implementation reports issued by the secretary of energy and environmental affairs under sections 12, 13, and 14 of chapter 21N shall include information about expenditures, participation rates, and results relative to the farm and forest-friendly communities program, as well as recommendations for administrative policies, programs and legislation to improve compliance and efficacy.

(b) The roadmap plans and implementation reports issued by the secretary of energy and environmental affairs under sections 12, 13, and 14 of chapter 21N shall also include recommendations developed in coordination with the division of local services within the department of revenue for updated incentive rates for land conservation, stewardship and ownership programs to ensure they:

(i) adjust with the value of the land, and

(ii) sufficiently reimburse or incentivize land conservation or stewardship to further the commonwealth's overall goals as established under said sections 12 and 13. The recommendations shall also be submitted to the house and senate committees on ways and means, the joint committee on municipalities and regional government, and the office of the state auditor.

SECTION 6. The department of energy resources, in consultation with the secretary of energy and environmental affairs, shall make recommendations to the general court on a successor program to the solar incentive program established in section 11 of chapter 75 of the acts of 2016.

In developing recommendations, the department shall consider:

- (i) the benefits provided by distributed generation facilities including, but not limited to: (A) avoided energy purchases; (B) avoided capacity purchases; (C) avoided transmission and distribution costs; (D) avoided line losses; (E) avoided environmental compliance costs; (F) avoided damages from greenhouse gas emissions; (G) enhanced reliability; (H) equity and environmental justice benefits; and (I) any other benefits as may be determined by the department;
- (ii) time differentiated rates and alternative rates that encourage equity and alignment with the commonwealth's energy, climate and natural resources programs and policies;
- (iii) the siting of clean energy projects in underserved communities and within the built environment on developed or degraded land including, but not limited to, rooftops, parking lots and other low-impact areas with minimal ecosystem service values;
- (iv) avoiding or minimizing impacts to natural and working lands and waters; and
- (v) potential solutions to challenges faced by municipalities relative to the deployment of solar within the built environment, including the provision of guidelines, technical assistance and incentives for municipalities to update local land use regulations to facilitate within-development siting.

The process shall work in parallel with the department's technical potential of solar study. The department shall file its recommendations with the clerks of the senate and house of representatives and the joint committee on telecommunications, utilities and energy not later than July 31, 2024.