



Substitute House Bill No. 6783

Public Act No. 05-124

**AN ACT CONCERNING THE PRESERVATION AND USE OF
AGRICULTURAL LANDS AND CONSERVATION AND
PRESERVATION RESTRICTIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 47-42a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

For the purposes of sections 47-42b, [and] 47-42c and section 2 of this act, the following definitions shall apply:

(a) "Conservation restriction" means a limitation, whether or not 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 described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.

(b) "Preservation restriction" means a limitation, whether or not 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 land, including, but not limited to, the state or any political

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subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.

Sec. 2. (NEW) (*Effective October 1, 2005*) (a) For purposes of this section, "state or local land use agency" includes, but is not limited to, a municipal planning commission, municipal zoning commission, combined municipal planning and zoning commission, a municipal zoning board of appeals, municipal inland wetlands and watercourses agency, a municipal historic district commission and any state agency that issues permits for the construction or improvement of real property.

(b) No person shall file a permit application with a state or local land use agency or a local building official or director of health, other than for interior work in an existing building or for exterior work that does not expand or alter the footprint of an existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction not later than sixty days prior to the filing of the permit application. In lieu of such notice, the applicant may submit a letter from the holder of such restriction or from the holder's authorized agent, verifying that the application is in compliance with the terms of the restriction. If the applicant has provided written notice pursuant to this subsection, the holder of the restriction may provide proof to the state or local land use agency or local building official or director of health that granting of the permit application will violate the terms of the restriction and such agency, official or director shall not grant the permit.

(c) If the applicant fails to comply with the provisions of subsection (b) of this section, the party holding the conservation or preservation restriction may, not later than fifteen days after receipt of actual notice of permit approval, file an appeal with the state or local land use

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agency or local building official or director of health, subject to any rules of such agency, official or director relating to appeals. The agency, official or director shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction.

Sec. 3. Section 22-6e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) The commissioner may develop a program to encourage the use of vacant public land owned by the state for gardening or agricultural purposes. In order to carry out said program, the commissioner shall: (1) In cooperation with other state agencies, compile a list of all vacant public land owned by the state, that in the opinion of such agencies and the commissioner may be feasibly used for gardening or agriculture, and (2) establish a procedure for application to the department on a form to be furnished by the commissioner for a permit to use available vacant public land for gardening or agricultural purposes. The commissioner shall adopt regulations pursuant to chapter 54 to carry out the provisions of this section, including but not limited to requirements for agreements to use vacant public land for gardening or agricultural purposes, establishment of a fee for such permit, except that no fee shall be charged for gardening permits, and requirements for the use of such land for agricultural purposes based on competitive open bidding. Permits shall be for a period prescribed by the commissioner but shall not exceed [seven] ten years from the date of issuance. After such period permit holders may apply for a new permit or renewal of the permit. Applicants shall submit a plan for such use and shall agree to maintain the land in a condition consistent with such land use plan, and shall agree to abide by regulations adopted by the department pursuant to chapter 54. Failure to carry out the conditions of agreement shall result in the forfeiture of the garden or agriculture permit. Any applicant who is granted the use

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of vacant public land for gardening or agricultural purposes shall indemnify and save harmless the state and all of its officers, agents and employees against suits and claims of liability of each name and nature arising out of, or in consequence of the use of vacant public land.

(b) Any permit issued pursuant to subsection (a) may be terminated by the commissioner, without cause, upon written notice to the permittee.

(c) A sponsor who has a gardening permit may assess a fee to individual gardeners for the sole purpose of reimbursing such sponsor for costs incurred in land preparation.

(d) Any payments by the permit holder pursuant to an agreement for the use of state land for agricultural purposes shall be credited in equal shares to the General Fund account of the agency whose land is being used for such purposes and to the Department of Agriculture for the purpose of administering the program.

Sec. 4. Section 22-26cc of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) There is established within the Department of Agriculture a program to solicit, from owners of agricultural land, offers to sell the development rights to such land and to inform the public of the purposes, goals and provisions of this chapter. The commissioner, with the approval of the State Properties Review Board, shall have the power to acquire or accept as a gift, on behalf of the state, the development rights of any agricultural land, if offered by the owner. Notice of the offer shall be filed in the land records wherein the agricultural land is situated. If ownership of any land for which development rights have been offered is transferred, the offer shall be effective until the subsequent owner revokes the offer in writing. The state conservation and development plan established pursuant to

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section 16a-24 shall be applied as an advisory document to the acquisition of development rights of any agricultural lands. The factors to be considered by the commissioner in deciding whether or not to acquire such rights shall include, but not be limited to, the following: (1) The probability that the land will be sold for nonagricultural purposes; (2) the current productivity of such land and the likelihood of continued productivity; (3) the suitability of the land as to soil classification and other criteria for agricultural use; (4) the degree to which such acquisition would contribute to the preservation of the agricultural potential of the state; (5) any encumbrances on such land; [L] (6) the cost of acquiring such rights; and (7) the degree to which such acquisition would mitigate damage due to flood hazards. Ownership by a nonprofit organization authorized to hold land for conservation and preservation purposes of land which prior to such ownership qualified for the program established pursuant to this section shall not be deemed to diminish the probability that the land will be sold for nonagricultural purposes. After a preliminary evaluation of such factors by the Commissioner of Agriculture, he shall obtain and review one or more fee appraisals of the property selected in order to determine the value of the development rights of such property. The commissioner shall notify the Department of Transportation, the Department of Economic and Community Development, the Department of Environmental Protection and the Office of Policy and Management that such property is being appraised. Any appraisal of the value of such land obtained by the owner and performed in a manner approved by the commissioner shall be considered by the commissioner in making such determination. The value of development rights for all purposes of this section shall be the difference between the value of the property for its highest and best use and its value for agricultural purposes as determined by the commissioner. The use or presence of pollutants or chemicals in the soil shall not be deemed to diminish the agricultural value of the land or to prohibit the commissioner from acquiring the

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development rights to such land. The commissioner may purchase development rights for a lesser amount provided he complies with all factors for acquisition specified in this subsection and in any implementing regulations. In determining the value of the property for its highest and best use, consideration shall be given but not limited to sales of comparable properties in the general area, use of which was unrestricted at the time of sale.

(b) Upon the acquisition by the commissioner of the development rights of agricultural land, said commissioner shall cause to be filed in the appropriate land records and in the office of the Secretary of the State a notice of such acquisition which shall set forth a description of the agricultural land as will be sufficient to give any prospective purchaser of such agricultural land or creditor of the owner thereof notice of such restriction. Upon the filing as aforesaid of the notice, the owner of such agricultural land shall not be permitted to exercise development rights with respect to such land, and such development rights shall be considered and deemed dedicated to the state in perpetuity except as hereinafter provided. If restricted land is to be sold, the former owner shall notify, in writing, the commissioner of such impending sale not more than ninety days before transfer of title to the land and shall provide him with the name and address of the new owner.

(c) The commissioner shall have no power to release such land from its agricultural restriction, except as set forth in this subsection. The commissioner, in consultation with the Commissioner of Environmental Protection and such advisory groups as the Commissioner of Agriculture may appoint, may approve (1) a petition by the owner of the restricted agricultural land to remove such restriction provided such petition is approved by resolution of the legislative body of the town, or (2) a petition by the legislative body of the town in which such land is situated to remove such restriction

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provided such petition is approved in writing by said owner. Upon approval of such a petition by the commissioner, the legislative body of the town shall submit to the qualified voters of such town the question of removing the agricultural restriction from such land or a part thereof, at a referendum held at a regular election or a special election warned and called for that purpose. In the event a majority of those voting at such referendum are in favor of such removal, the restriction shall be removed from the agricultural land upon filing of the certified results of such referendum in the land records and the office of the Secretary of the State, and the commissioner shall convey the development rights to such owner provided such owner shall pay the commissioner an amount equal to the value of such rights. Such petition shall set forth the facts and circumstances upon which the commissioner shall consider approval, and said commissioner shall deny such approval unless he determines that the public interest is such that there is an overriding necessity to relinquish control of the development rights. The commissioner shall hold at least one public hearing prior to the initiation of any proceedings hereunder. The expenses, if any, of the hearing and the referendum shall be borne by the petitioner. In the event that the state sells any development rights under the procedure provided in this subsection, it shall receive the value of such rights.

(d) Whenever the commissioner acquires the development rights of any agricultural land and the purchase price of such development rights is ten thousand dollars or more, said commissioner and the owner of such land may enter into a written agreement which provides for the payment of the purchase price in two or three annual installments, but no interest shall be paid on any unpaid balance of such purchase price.

(e) Whenever the commissioner acquires the development rights to any agricultural land, and any municipality in which all or part of the

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land is situated paid a part of the purchase price from a fund established pursuant to section 7-131q, such municipality and the state may jointly own the development rights, provided joint ownership by such municipality shall be limited to land within its boundaries. The land may be released from its agricultural restriction in accordance with the provisions of subsection (c) of this section. The commissioner shall adopt regulations in accordance with the provisions of chapter 54 establishing procedures for the joint acquisition of development rights to agricultural land.

(f) The acquisition of the development rights to any agricultural land by the commissioner shall not be deemed to be ownership of such land and the state shall not be liable for pollution or contamination of such land and no person may bring a civil action against the state for damages resulting from pollution or contamination of such agricultural land.

(g) The commissioner may issue a letter of intent requesting the assistance of a nonprofit organization, as defined in [subsection (c)(3) of Section 501 of the United States Internal Revenue Code] Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, in acquiring the development rights to certain agricultural land. If such organization acquires such rights it may sell them to the commissioner based on a purchase agreement. Such agreement may include reimbursement for reasonable expenses incurred in the acquisition of the rights as well as payment for the rights. The commissioner may enter into joint ownership agreements to acquire the development rights to any qualified agricultural land with any nonprofit organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, provided the mission of such nonprofit organization is the

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permanent protection of agricultural land for the purposes of continued agricultural use.

(h) In addition to development rights, the commissioner may acquire or accept as a gift the rights of the owner to construct any residences or any farm structures on agricultural land.

(i) The Commissioner of Agriculture, pursuant to any cooperative agreement with the United States Department of Agriculture for the disbursement of funds under federal law, may require that any property to which rights are acquired under this section with such funds shall be managed in accordance with a conservation plan which utilizes the standards and specifications of the Natural Resources Conservation Service field office technical guide and is approved by such service. Any instrument by which the commissioner acquires such rights and for which any such funds are used may provide for a contingent right in the United States of America in the event that the state of Connecticut fails to enforce any of the terms of its rights acquired under this section which failure shall be determined by the United States Secretary of Agriculture. Such contingent right shall entitle the secretary to enforce any rights acquired by the state under this section by any authority provided under law. Such instrument may provide that such rights shall become vested in the United States of America in the event that the state of Connecticut attempts to terminate, transfer or otherwise divest itself of any such rights without the prior consent of the United States Secretary of Agriculture and payment of consideration to the United States and may further provide that title to such rights may be held by the United States of America at any time at the request of the United States Secretary of Agriculture. In connection with such an agreement, the commissioner may hold the United States harmless from any action based on negligence in the procurement or management of any rights acquired under this section and may assure that proper title evidence is secured, that the title is

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insured to the amount of the federal cost paid for the interest of the United States of America and that, in the event of a failure of title, as determined by a court of competent jurisdiction, and payment of insurance to the state, the state will reimburse the United States for the amount of the federal cost paid.

(j) The commissioner, when acquiring the development rights of any agricultural lands on behalf of the state, may incorporate deed requirements in accordance with the provisions of the federal Farm and Ranch Lands Protection Program, 7 CFR 1491.1, et seq..

Sec. 5. Section 47-42c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2005*):

Such conservation and preservation restrictions are interests in land and may be acquired by any governmental body or any charitable corporation or trust which has the power to acquire interests in land in the same manner as it may acquire other interests in land. Such restrictions may be enforced by injunction or proceedings in equity. The Attorney General may bring an action in the superior court to enforce the public interest in such restrictions.

Approved June 24, 2005