



House of Representatives

General Assembly

File No. 101

January Session, 2013

Substitute House Bill No. 6316

House of Representatives, March 21, 2013

The Committee on Environment reported through REP. GENTILE of the 104th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE STATE PURCHASE OF DEVELOPMENT RIGHTS FOR AGRICULTURAL LAND PRESERVATION AND CERTAIN REVISIONS TO THE COMMUNITY FARMS PROGRAM.

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

1 Section 1. Subsection (e) of section 22-26cc of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective from*
3 *passage*):

4 (e) Whenever the commissioner acquires the development rights to
5 any agricultural land, and any municipality in which all or part of the
6 land is situated paid a part of the purchase price from a fund
7 established pursuant to section 7-131q, such municipality and the state
8 may jointly own the development rights. [provided joint ownership
9 by such municipality shall be limited to land within its boundaries.]
10 The land may be released from its agricultural restriction in accordance
11 with the provisions of subsection (c) of this section. The commissioner
12 shall adopt regulations in accordance with the provisions of chapter 54
13 establishing procedures for the joint acquisition of development rights

14 to agricultural land.

15 Sec. 2. Section 22-26nn of the general statutes is repealed and the
16 following is substituted in lieu thereof (*Effective from passage*):

17 (a) The Commissioner of Agriculture may establish a community
18 farms program for the preservation of farmland that does not meet the
19 criteria of the farmland preservation program established pursuant to
20 section 22-26cc for reasons of size, soil quality or location but that may
21 contribute to local economic activity through agricultural production.
22 The commissioner may purchase up to one hundred per cent of the
23 value of development rights directly from an eligible owner, or may
24 acquire development rights on qualifying farmland jointly with a
25 municipality, subject to the appraisal and review required by the
26 regulations adopted pursuant to this section. For the purposes of this
27 section, "development rights" and "owner" shall have the same
28 meaning as in section 22-26bb.

29 (b) If the Commissioner of Agriculture establishes a program in
30 accordance with subsection (a) of this subsection, the commissioner
31 shall, in consultation with the Farmland Preservation Advisory Board
32 established under section 22-26ll, establish criteria for said program.
33 Such criteria shall give preference to farms that produce food or fiber,
34 and at a minimum shall consider (1) the probability that the land will
35 be sold for nonagricultural purposes, (2) the current productivity of
36 the land and the likelihood of continued productivity of such land, (3)
37 the suitability of the land for agricultural use, including whether the
38 soil is classified as locally important soils by the United States
39 Department of Agriculture, and (4) the demonstrated level of
40 community support for preservation of the parcel. The commissioner
41 shall, in consultation with said board, consider mechanisms that
42 encourage continuation of the land in agricultural production to
43 maintain its long-term availability and affordability for future
44 generations of farmers, including, but not limited to, deed restrictions
45 or stewardship requirements.

46 (c) Upon the acquisition by the commissioner of the development

47 rights to agricultural land pursuant to this section, the commissioner
48 shall cause to be filed in the appropriate land records and in the office
49 of the Secretary of the State a notice of such acquisition which shall set
50 forth a description of the agricultural land as will be sufficient to give
51 any prospective purchaser of such agricultural land or creditor of the
52 owner thereof notice of such restriction. Upon such filing, the owner of
53 such agricultural land shall not be permitted to exercise development
54 rights with respect to such land, and such development rights shall be
55 considered and deemed dedicated to the state in perpetuity, except as
56 hereinafter provided. If restricted land is to be sold, the owner shall
57 notify the commissioner, in writing, of such impending sale not more
58 than ninety days before transfer of title to the land and shall provide
59 the commissioner with the name and address of the new owner.

60 (d) The Commissioner of Agriculture shall have no power to release
61 such land from its agricultural restriction, except as set forth in this
62 subsection. The Commissioner of Agriculture, in consultation with the
63 Commissioner of Energy and Environmental Protection and such
64 advisory groups as the Commissioner of Agriculture may appoint,
65 may approve (1) a petition by the owner of the restricted agricultural
66 land to remove such restriction provided such petition is approved by
67 resolution of the legislative body of the town, or (2) a petition by the
68 legislative body of the town in which such land is situated to remove
69 such restriction provided such petition is approved in writing by said
70 owner. Upon approval of such a petition by the Commissioner of
71 Agriculture, the legislative body of the town shall submit to the
72 qualified voters of such town the question of removing the agricultural
73 restriction from such land or a part thereof, at a referendum held at a
74 regular election or a special election warned and called for that
75 purpose. In the event a majority of those voting at such referendum are
76 in favor of such removal, the restriction shall be removed from the
77 agricultural land upon filing of the certified results of such referendum
78 in the land records and the office of the Secretary of the State, and the
79 Commissioner of Agriculture shall convey the development rights to
80 such owner provided such owner shall pay the Commissioner of
81 Agriculture an amount equal to the value of such rights. Such petition

82 shall set forth the facts and circumstances upon which the
83 Commissioner of Agriculture shall consider approval, and said
84 commissioner shall deny such approval unless said commissioner
85 determines that the public interest is such that there is an overriding
86 necessity to relinquish control of the development rights. The
87 Commissioner of Agriculture shall hold at least one public hearing
88 prior to the initiation of any proceedings hereunder. The expenses, if
89 any, of the hearing and the referendum shall be borne by the
90 petitioner. In the event that the state sells any development rights
91 under the procedure provided in this subsection, it shall receive the
92 value of such rights.

93 (e) Whenever the Commissioner of Agriculture acquires the
94 development rights of any agricultural land pursuant to this section
95 and the purchase price of such development rights is ten thousand
96 dollars or more, said commissioner and the owner of such land may
97 enter into a written agreement which provides for the payment of the
98 purchase price in two or three annual installments, but no interest shall
99 be paid on any unpaid balance of such purchase price.

100 (f) Whenever the commissioner acquires the development rights to
101 any agricultural land, and any municipality in which all or part of the
102 land is situated paid a part of the purchase price from a fund
103 established pursuant to section 7-131q, such municipality and the state
104 may jointly own the development rights. The land may be released
105 from its agricultural restriction in accordance with the provisions of
106 subsection (d) of this section. The commissioner shall adopt
107 regulations, in accordance with the provisions of chapter 54,
108 establishing procedures for the joint acquisition of development rights
109 to agricultural land.

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

115 agricultural land.

116 (h) The commissioner may issue a letter of intent requesting the
117 assistance of a nonprofit organization, as defined in Section 501(c)(3) of
118 the Internal Revenue Code of 1986, or any subsequent corresponding
119 internal revenue code of the United States, as from time to time
120 amended, in acquiring the development rights to certain agricultural
121 land. If such organization acquires such rights it may sell them to the
122 commissioner based on a purchase agreement. Such agreement may
123 include reimbursement for reasonable expenses incurred in the
124 acquisition of the rights as well as payment for the rights. The
125 commissioner may enter into joint ownership agreements to acquire
126 the development rights to any qualified agricultural land with any
127 nonprofit organization, as defined in Section 501(c)(3) of the Internal
128 Revenue Code of 1986, or any subsequent corresponding internal
129 revenue code of the United States, as from time to time amended,
130 provided the mission of such nonprofit organization is the permanent
131 protection of agricultural land for the purposes of continued
132 agricultural use.

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

136 (j) The Commissioner of Agriculture, pursuant to any cooperative
137 agreement with the United States Department of Agriculture for the
138 disbursement of funds under federal law, may require that any
139 property to which rights are acquired under this section with such
140 funds shall be managed in accordance with a conservation plan which
141 utilizes the standards and specifications of the Natural Resources
142 Conservation Service field office technical guide and is approved by
143 such service. Any instrument by which the commissioner acquires
144 such rights and for which any such funds are used may provide for a
145 contingent right in the United States of America in the event that the
146 state of Connecticut fails to enforce any of the terms of its rights
147 acquired under this section which failure shall be determined by the

148 United States Secretary of Agriculture. Such contingent right shall
 149 entitle the United States Secretary of Agriculture to enforce any rights
 150 acquired by the state under this section by any authority provided
 151 under law. Such instrument may provide that such rights shall become
 152 vested in the United States of America in the event that the state of
 153 Connecticut attempts to terminate, transfer or otherwise divest itself of
 154 any such rights without the prior consent of the United States
 155 Secretary of Agriculture and payment of consideration to the United
 156 States and may further provide that title to such rights may be held by
 157 the United States of America at any time at the request of the United
 158 States Secretary of Agriculture. In connection with such an agreement,
 159 the commissioner may hold the United States harmless from any
 160 action based on negligence in the procurement or management of any
 161 rights acquired under this section and may assure that proper title
 162 evidence is secured, that the title is insured to the amount of the
 163 federal cost paid for the interest of the United States of America and
 164 that, in the event of a failure of title, as determined by a court of
 165 competent jurisdiction, and payment of insurance to the state, the state
 166 will reimburse the United States for the amount of the federal cost
 167 paid.

168 (k) The commissioner, when acquiring the development rights of
 169 any agricultural lands on behalf of the state pursuant to this section,
 170 may incorporate deed requirements in accordance with the provisions
 171 of the federal Farm and Ranch Lands Protection Program, 7 CFR
 172 1491.1, et seq.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	22-26cc(e)
Sec. 2	<i>from passage</i>	22-26nn

ENV *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Department of Agriculture	GO Bonds - Potential Cost	See Below	See Below

Municipal Impact: None

Explanation

The bill allows the Department of Agriculture (DAG) to enter into joint ownership agreements with certain nonprofits for the acquisition of agricultural development rights. To this extent, there may be increased General Obligation (GO) bond costs for the Farmland Preservation program administered by DAG. In FY 13, there is an unallocated balance of \$5.0 million for the Farmland Preservation program, and \$10.0 million proposed in the Governor's recommended budget for both FY 14 and FY 15.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to any development rights purchased.

OLR Bill Analysis

sHB 6316

AN ACT CONCERNING THE STATE PURCHASE OF DEVELOPMENT RIGHTS FOR AGRICULTURAL LAND PRESERVATION AND CERTAIN REVISIONS TO THE COMMUNITY FARMS PROGRAM.

SUMMARY:

This bill makes changes to the state's community farms and farmland preservation programs, which allow the state to purchase development rights to certain agricultural land. By law, the Department of Agriculture (DOAG) establishes these programs.

The bill generally applies certain requirements for acquiring development rights under the Farmland Preservation Program to the Community Farms Program. Among other things, it:

1. requires the DOAG commissioner to file a notice of acquisition of the land's development rights,
2. provides a procedure to remove the restriction,
3. allows partnerships with nonprofit organizations and municipalities to purchase development rights, and
4. allows special terms when purchasing development rights with federal funds under an agreement with the U.S. Department of Agriculture (USDA).

The bill also expands the development rights that a municipality may jointly own with the state under the Farmland Preservation Program if the municipality pays part of the purchase price. Current law restricts a municipality's ownership to the development rights of the land within its border. The bill removes this restriction, thus

allowing a municipality to jointly own all of the purchased development rights, even if part of the land is outside its border. The bill correspondingly applies the expanded purchase rights to the Community Farms Program.

EFFECTIVE DATE: Upon passage

COMMUNITY FARMS PROGRAM

Current Program

By law, the DOAG administers the Community Farms Program to preserve farmland that may contribute to local economic activity through agricultural production, but is ineligible for the state's Farmland Preservation Program due to size, soil quality, or location (see BACKGROUND). Under the program, the DOAG commissioner is allowed to (1) purchase up to 100% of the value of development rights from an eligible owner or (2) acquire development rights on qualifying farmland jointly with a municipality, subject to appraisal and review requirements the department establishes.

New Provisions

The bill applies certain provisions for acquiring development rights under the Farmland Preservation Program to the Community Farms Program.

Restriction Notice. The bill requires the DOAG commissioner to file notice of development right acquisition in the appropriate land records and the secretary of the state's office when he acquires the development rights to agricultural land under the Community Farms Program. The notice must provide a sufficient description of the agricultural land to notify prospective purchasers of the land or creditors of the owner about the restriction.

Once the notice is filed, the owner is prohibited from developing the land. The development rights are considered dedicated to the state in perpetuity unless the land is released from its restriction. No earlier than 90 days before the sale of any such restricted agricultural land, the owner must provide written notice about the sale, stating the name

and address of the new owner, to the DOAG commissioner.

Restriction Release. Under the bill, the DOAG commissioner is allowed to release the development rights restriction, subject to the procedure set forth below, if there is a petition to remove it by the (1) owner of the restricted land if the petition is approved by a resolution of the town's legislative body or (2) legislative body of the town where the land is located if the petition is approved in writing by the owner.

The bill requires a petition to include all the facts and circumstances the commissioner must consider. The commissioner may only approve the release of the restriction if he determines that there is an overriding public interest in giving up control of the development rights. He must consult with the Department of Energy and Environmental Protection commissioner and any advisory groups he appoints.

The DOAG commissioner must hold at least one public hearing before he makes a decision on the petition. If the commissioner approves a petition, the town legislative body must submit the question of removing the restriction to a vote at a referendum held at a regular election or a special election noticed and called for the purpose of such removal. The petitioner must pay the cost of the public hearing and referendum.

If a majority votes in favor of removal, the (1) restriction must be removed by filing the referendum's certified results in the land records and at the secretary of the state's office and (2) DOAG commissioner must convey the development rights to the owner if the owner pays him an amount equal to the value of the rights. If the state sells any development rights through the restriction removal procedure, it must receive the value of the rights.

Nonprofit and Municipal Partnerships. The bill allows the DOAG commissioner to issue a letter of intent requesting assistance from a nonprofit organization to acquire the development rights to certain agricultural land. It also permits him to enter into a joint ownership agreement to acquire the development rights to eligible agricultural

land with such a nonprofit if the nonprofit's mission is to permanently protect agricultural land for agricultural use.

If the nonprofit acquires the development rights, the bill allows it to sell the rights to the DOAG commissioner according to a purchase agreement. The agreement may include reimbursement for reasonable expenses incurred when acquiring the development rights, in addition to the payment for the rights.

Under the bill, the state and a municipality may jointly own the development rights to agricultural land if the (1) land is located at least partly within the municipality's border and (2) municipality pays a part of the purchase price from a municipal fund for preserving agricultural land. The bill requires the DOAG commissioner to adopt regulations establishing procedures for joint acquisition of development rights. It permits removing the development restriction through the procedure described above.

U.S. Department of Agriculture Agreements. The bill allows the DOAG commissioner to agree to special terms when he purchases development rights using federal funds under a cooperative agreement with the USDA.

It allows the commissioner to require that land purchased under such a cooperative agreement be managed according to a conservation plan that uses the standards and specifications of, and is approved by, the USDA's Natural Resource Conservation Service.

Under the bill, the document used to acquire the rights may give a contingent right to the federal government, if the USDA secretary determines that Connecticut has not enforced any of the development right's terms. The secretary may use the contingency to enforce any of the state's rights. The acquisition document may also require rights to be vested in the U.S. if Connecticut tries to terminate, transfer, or otherwise divest itself of development rights without (1) the USDA secretary's consent and (2) paying consideration to the federal government. The document may also provide that the U.S. hold title to

the development rights at the secretary's request.

The bill allows the DOAG commissioner to agree to hold the U.S. harmless for any negligent act in procuring or managing these rights. He may also assure that (1) proper title evidence is secured, (2) the title is insured to the amount the federal government paid for its interest in the development rights, and (3) the U.S. will be reimbursed for the amount it paid if a court determines the title is not secure and the title insurance company pays the state for the title's failure.

Additional Provisions. Under the bill, when the DOAG commissioner acquires development rights, he may pay the purchase price in two or three annual installments if the (1) owner and commissioner agree in writing and (2) purchase price is at least \$10,000. The bill prohibits interest payments on the unpaid balance.

The bill also permits the commissioner to (1) acquire or accept as a gift the owner's rights to construct residences or farm structures on the agricultural land and (2) incorporate deed requirements under the federal Farm and Ranch Lands Protection Program when acquiring development rights for the state (7 CFR 1491.1, *et seq.*).

The bill specifies that acquiring the development rights is not considered ownership of the land and the state is not liable for pollution or contamination of such land. It prohibits anyone from bringing a civil action against the state for damages from pollution or contamination of the land.

BACKGROUND

Farmland Preservation Program

The state's primary program to preserve farmland is the Farmland Preservation Program. Under the program, DOAG preserves farmland by acquiring the development rights to agricultural properties. The farms remain in private ownership but a permanent restriction on nonagricultural uses is placed on the properties. The main objective of the program is to secure a food and fiber producing land resource base, primarily of prime and important farmland soils.

Agricultural Land

By law, “agricultural land” means any land in the state which, based on soil types, existing and past use for agricultural purposes, and other relevant factors, is suitable for: (1) cultivating plants for production of human food and fiber and other useful and valuable plant products; (2) producing animals, livestock, and poultry useful to people and the environment; and (3) providing economically profitable farm units. It may include adjacent pastures, wooded land, natural drainage areas, and other adjacent open areas (CGS § 22-26bb).

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 28 Nay 0 (03/04/2013)