
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)