

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 13-104—sHB 6316

Environment Committee

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

SUMMARY: This act makes changes in the state's community farms and farmland preservation programs, under which the state purchases development rights to certain agricultural land. By law, the Department of Agriculture (DoAg) administers these programs.

The act generally applies certain requirements for acquiring development rights to land 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 on development,
3. allows the DoAg commissioner to enter into 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 act 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 for the rights. Prior law restricted a municipality's ownership to the development rights of the land within its borders. The act 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 borders. It correspondingly applies the expanded purchase rights to the Community Farms Program.

EFFECTIVE DATE: Upon passage

COMMUNITY FARMS PROGRAM

Existing Program

By law, 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 the land's 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.

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

Recording Notice of Development Rights in the Land Records

When the DoAg commissioner acquires development rights to agricultural land under the Community Farms Program, the act requires him to file notice of the acquisition in the appropriate land records and the Secretary of the State's Office. The notice must provide a sufficient description of the land to notify prospective purchasers or the landowner's creditors about the development restriction.

Once the notice is filed, the owner is prohibited from developing the land. The development rights are generally considered dedicated to the state in perpetuity. No earlier than 90 days before the sale of any such restricted agricultural land, the owner must provide written notice of the sale to the commissioner, stating the name and address of the new owner.

Releasing Development Rights

Under the act, 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 that is approved by a resolution of the town's legislative body or (2) legislative body of the town where the land is located that is approved, in writing, by the owner.

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

The commissioner must hold at least one public hearing before he makes a decision on the petition. If he approves a petition, the town's 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 public hearing and referendum expenses.

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 the Secretary of the State's Office and (2) commissioner must convey the development rights to the owner if the owner pays him an amount equal to the value of the rights. The act specifies that 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 act 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 with a nonprofit organization to acquire the development rights to eligible agricultural land if the organization's mission is to permanently protect

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agricultural land for agricultural use.

If the organization acquires the development rights, the act allows it to sell the rights to the commissioner according to a purchase agreement. The agreement may include reimbursement for reasonable expenses incurred to acquire the development rights, in addition to payment for the rights.

Under the act, 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 borders and (2) municipality pays a part of the purchase price from a municipal fund for preserving agricultural land. The act requires the commissioner to adopt regulations establishing procedures for joint acquisition of development rights. It permits removing the development restriction through the procedure described above.

USDA Agreements

The act 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 the land to which the rights are acquired 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 Resources Conservation Service.

Under the act, 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 by any legal authority. The acquisition document may also require rights to be vested in the United States 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 United States hold title to the development rights when the secretary requests it.

The act allows the commissioner to agree to hold the United States 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 United States 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 act, when the DoAg commissioner acquires development rights, he may pay the purchase price in two or three annual installments if (1) he and the owner agree in writing and (2) the purchase price is at least \$10,000. The act prohibits interest payments on the unpaid balance.

The act also permits the commissioner to (1) acquire or accept as a gift the owner's rights to construct residences or farm structures on agricultural land and (2) incorporate deed requirements under the federal Farm and Ranch Lands

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Protection Program when acquiring development rights for the state (7 CFR 1491.1 et seq.).

The act specifies that acquiring 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

This program is the state's primary program to preserve farmland. 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.

Related Acts

PA 13-59 expands the allowable uses of municipal agricultural land preservation funds. Specifically, it allows a municipality to use the funds to acquire a landowner's rights to build any residence or farm structure on agricultural land and it explicitly allows the municipality to accept these rights as a gift.

PA 13-90 establishes a procedure to preserve and manage certain state-owned property known as the "Farm at the Southbury Training School" for agricultural use.

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