

# STATE OF NEW YORK

S. 6231

A. 7845

2019-2020 Regular Sessions

## SENATE - ASSEMBLY

May 24, 2019

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

IN ASSEMBLY -- Introduced by M. of A. THIELE, LUPARDO, GOTTFRIED, JONES, WILLIAMS, COOK, CARROLL, RAIA, LAVINE, TAGUE, BLAKE, GLICK, SEAWRIGHT, BARRON, D'URSO, CROUCH, STIRPE, CAHILL, ABINANTI, WOERNER, FAHY, STECK, ARROYO, WEPRIN, BRABENEC, MONTESANO, McDONOUGH, PALUMBO, SOLAGES, L. ROSENTHAL, COLTON, SANTABARBARA, HUNTER, PAULIN, QUART, STERN, BARNWELL, PERRY, ROZIC, MAGNARELLI, OTIS, SIMOTAS, HEVESI, ZEBROWSKI, BARRETT, WALLACE, EPSTEIN, NIOU, JAFFEE, DINOWITZ, RICHARDSON, DE LA ROSA, RYAN, ORTIZ, RODRIGUEZ, TAYLOR, DeSTEFANO, GRIFFIN, MOSLEY, SCHMITT -- Multi-Sponsored by -- M. of A. BRONSON, BUCHWALD, BYRNE, CYMBROWITZ, GALEF, LENTOL, M. L. MILLER, SAYEGH, SIMON -- read once and referred to the Committee on Local Governments

AN ACT in relation to certain agricultural lands

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Legislative findings and intent. The legislature hereby
- 2 finds that article XIV, section 4 of the state constitution provides
- 3 that it shall be the policy of the state to conserve and protect its
- 4 natural resources and scenic beauty and encourage the development of its
- 5 agricultural lands for the production of food and other agricultural
- 6 products.
- 7 Section 247 of the general municipal law authorizes any county, city,
- 8 town or village to acquire interests or rights in real property for the
- 9 preservation of open spaces and areas as a public purpose. Open space or
- 10 open area is defined as any space or area characterized by: (1) natural
- 11 scenic beauty; or (2) whose existing openness, natural condition, or
- 12 present state of use, if retained, would enhance the present or poten-
- 13 tial value of abutting or surrounding urban development, or would main-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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tain or enhance the conservation of natural or scenic resources. Natural resources include but are not limited to agricultural lands defined as open lands actually used in bona fide agricultural production.

The provisions of section 247 of the general municipal law relating to open space or area and the actual use of such lands in bona fide agricultural production have recently been the subject of a legal controversy with regard to the validity of local regulations that permit agricultural uses, buildings, or structures on agricultural lands protected pursuant to that section.

In the case of Long Island Pine Barrens Society, Inc. v. Suffolk County Legislature, 159 A.D.3d 805 (2d Dep't 2018), lv. denied, 32 N.Y.3d 910 (2018), the plaintiffs alleged that where public funds have been used to acquire interests or rights in agricultural lands, such lands must remain open and undeveloped. It was further alleged that once such interests or rights are acquired on such lands by a municipality, they must remain unchanged and no further development may occur. Finally, it was claimed that certain uses, as well as the erection of agricultural structures, such as barns, fencing, and irrigation systems constituted an illegal alienation of the government's interest in agricultural lands or a waste of public property. The appellate division of the state supreme court rejected these claims and declared the local regulations to be valid. Leave to appeal was denied by the state court of appeals.

The legislature reaffirms that interests or rights acquired in agricultural lands pursuant to section 247 of the general municipal law do not prohibit or preclude the right to use agricultural lands for uses, buildings and structures that are accessory to bona fide agricultural production unless such uses, buildings or structures are expressly prohibited or limited in the documents effecting the transfer of interests or rights to a municipality pursuant to this section. The legislature further affirms that municipalities possess the legal authority to permit and regulate such uses, buildings, and structures on agricultural lands protected pursuant to this section. Such uses, buildings or structures permitted pursuant to local regulation do not constitute a waste of public property, nor do they constitute an alienation of any interests or rights in real property. Such uses, buildings or structures are consistent with the preservation of open space and areas pursuant to section 247 of the general municipal law.

This legislation further reaffirms the state's interest in the development of its agricultural lands for the production of food and agricultural products as set forth in the state constitution. It is the further intent of the legislature to reaffirm its commitment to protecting, conserving and encouraging the development and improvement of the state's agricultural lands. Agricultural lands in New York state are in jeopardy of being lost for agricultural purposes due to deleterious side effects resulting from the extension of nonagricultural development into farm areas.

The socio-economic vitality of agriculture in this state is essential to the economic stability and growth of many local communities and the state as a whole. Without the ability to engage in bona fide agricultural production, which includes the right to engage in uses and the right to erect buildings and structures accessory to agricultural production, more agricultural lands will be lost and farming as a vital component of the state's economy will be further threatened.

§ 2. Agricultural lands, acquired pursuant to section 247 of the general municipal law, are eligible to receive permits for uses, build-

1 ings, and structures provided that the municipality determines the  
2 granting of any such permits are accessory to bona fide agricultural  
3 production.  
4 § 3. This act shall take effect immediately.