

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1394 Session of
2009

INTRODUCED BY HOUGHTON, HANNA, GEORGE, GERGELY, CALTAGIRONE,
CARROLL, DALEY, GODSHALL, KESSLER, KORTZ, MILLARD, SIPTROTH,
SOLOBAY, WHITE, ROAE, BRADFORD, MCILVAINE SMITH, YOUNGBLOOD,
GIBBONS, MATZIE AND MENSCH, APRIL 30, 2009

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 17, 2009

AN ACT

1 Amending the act of December 19, 1974 (P.L.973, No.319),
2 entitled "An act prescribing the procedure under which an
3 owner may have land devoted to agricultural use, agricultural
4 reserve use, or forest reserve use, valued for tax purposes
5 at the value it has for such uses, and providing for
6 reassessment and certain interest payments when such land is
7 applied to other uses and making editorial changes," further
8 providing for definitions, for responsibilities of the county
9 assessor in general, for split-off, separation or transfer of
10 land and for roll-back taxes and special circumstances; and
11 providing for removal of land from preferential assessment.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. The definitions of "agricultural reserve,"
15 "agricultural use" and "forest reserve" in section 2 of the act
16 of December 19, 1974 (P.L.973, No.319), known as the
17 Pennsylvania Farmland and Forest Land Assessment Act of 1974,
18 amended December 21, 1998 (P.L.1225, No.156) and December 8,
19 2004 (P.L. 1785, No.235), are amended and the section is amended
20 by adding definitions to read:

21 Section 2. Definitions.--As used in this act, the following

words and phrases shall have the meanings ascribed to them in this section unless the context obviously otherwise requires:

* * *

"Agricultural reserve." Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for such use, without charge or fee, on a nondiscriminatory basis. The term includes any land devoted to the development and operation of an alternative energy system, if a majority of the energy ANNUALLY generated is utilized on the tract in the production of an agricultural commodity or in activities performed on the farmstead land.

"Agricultural use." Land which is used for the purpose of producing an agricultural commodity or is devoted to and meets the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government. The term includes:

(1) any farmstead land on the tract[. The term includes];

(2) a woodlot [and];

(3) any land which is rented to another person and used for the purpose of producing an agricultural commodity; and

(4) any land devoted to the development and operation of an alternative energy system, if a majority of the energy ANNUALLY generated is utilized on the tract in the production of an agricultural commodity or in activities performed on the farmstead land.

* * *

"Alternative energy." Electricity, heat or other usable form of energy generated from a Tier I energy source.

"Alternative energy system." A facility or energy system

1 that utilizes a Tier I energy source to generate alternative
2 energy. The term includes a facility or system that generates
3 alternative energy for utilization onsite or for delivery of the
4 energy generated to an energy distribution company or to an
5 energy transmission system operated by a regional transmission
6 organization.

7 * * *

8 "Forest reserve." Land, ten acres or more, stocked by forest
9 trees of any size and capable of producing timber or other wood
10 products. The term includes any land devoted to the development
11 and operation of an alternative energy system, if a majority of
12 the energy ANNUALLY generated is utilized on the tract in the
13 production of an agricultural commodity or in activities
14 performed on the farmstead land.

15 * * *

16 "Tier I energy source." A Tier I alternative energy source,
17 as defined in section 2 of the act of November 30, 2004
18 (P.L.1672, No.213), known as the "Alternative Energy Portfolio
19 Standards Act."

20 * * *

21 Section 2. Section 5 of the act is amended by adding a
22 subsection to read:

23 Section 5. Responsibilities of the County Assessor in
24 General.--* * *

25 (b.1) Portions of land devoted to the development and
26 operation of an alternative energy system meeting the definition
27 of agricultural use, agricultural reserve or forest reserve
28 shall retain the same land use category for preferential
29 assessment as was approved for the land before the devotion took
30 place.

Section 3. Sections 6 and 8(b) of the act, amended December 21, 1998 (P.L.1225, No.156), are amended to read:

Section 6. Split-off, Separation or Transfer; Other Use.--

(a.1) (1) The split-off of a part of land which is subject to preferential assessment under this act shall subject the land so split off and the entire tract from which the land was split off to roll-back taxes as set forth in section 5.1. The landowner changing the use of the land to one inconsistent with this act shall be liable for payment of roll-back taxes. The landowner of land which continues to be eligible for preferential assessment shall not be liable for any roll-back taxes triggered as a result of a change to an ineligible use by the owner of the split-off tract. Roll-back taxes under section 5.1 shall not be due if one of the following provisions applies:

(i) The tract split off does not exceed two acres annually, except that a maximum of the minimum residential lot size requirement annually may be split off if the property is situated in a local government unit which requires a minimum residential lot size of two to three acres; the tract split off is used only for agricultural use, agricultural reserve or forest reserve or for the construction of a residential dwelling to be occupied by the person to whom the land is conveyed; and the total tract or tracts so split off do not exceed the lesser of ten acres or ten percent (10%) of the entire tract subject to preferential assessment.

(ii) The split-off occurs through a condemnation.

(2) Each tract which has been split off under paragraph (1) (i) shall be subject to roll-back taxes for such a period of time as provided in section 5.1. The landowner changing the use of the land shall be liable for payment of roll-back taxes.

1 (3) The split-off of a tract of land which meets the
2 provisions of paragraph (1) shall not invalidate the
3 preferential assessment on any land retained by the landowner
4 which continues to meet the provisions of section 3.

5 (4) Payment of roll-back taxes by the liable landowner shall
6 not invalidate the preferential assessment on any land which
7 continues to meet the provisions of section 3.

8 (5) Any person may bring an action in equity to enjoin use
9 of the land inconsistent with the use provided in this
10 subsection.

11 (6) Land which has been split off shall be deemed to be used
12 for residential use, agricultural use, agricultural reserve or
13 forest reserve unless it is demonstrated that the owner of the
14 split-off parcel is actively using the tract in a manner which
15 is inconsistent with residential use, agricultural use,
16 agricultural reserve or forest reserve.

17 (a.2) The owner of land subject to preferential assessment
18 may separate land. If a separation occurs, all tracts formed by
19 the separation shall continue to receive preferential assessment
20 unless, within seven years of the separation, there is a
21 subsequent change of use to one inconsistent with the provisions
22 of section 3. Such subsequent change in use shall subject the
23 entire tract so separated to roll-back taxes as set forth in
24 section 5.1. The landowner changing the use of the land to one
25 inconsistent with the provisions of section 3 shall be liable
26 for payment of roll-back taxes. After seven years from the date
27 of the separation, only that portion of land which has had its
28 use changed to one which is inconsistent with the provisions of
29 section 3 shall be subject to roll-back taxes as set forth in
30 section 5.1. Payment of roll-back taxes shall not invalidate the

1 preferential assessment on any land which continues to meet the
2 provisions of section 3.

3 (a.3) If ownership of land subject to a single application
4 for preferential assessment is transferred to another landowner,
5 the land shall continue to receive preferential assessment, and
6 no roll-back taxes shall be due unless there is a subsequent
7 change of use to one inconsistent with the provisions of section
8 3. The landowner changing the use of the land to one
9 inconsistent with the provisions of section 3 shall be liable
10 for payment of roll-back taxes. Payment of roll-back taxes shall
11 not invalidate the preferential assessment on any land which
12 continues to meet the provisions of section 3.

13 (b.1) The owner of property subject to preferential
14 assessment may lease land covered by the preferential assessment
15 to be used for wireless or cellular telecommunication when the
16 following conditions are satisfied:

17 (1) The tract of land so leased does not exceed one-half of
18 an acre.

19 (2) The tract of land does not have more than one
20 communication tower.

21 (3) The tract of land is accessible.

22 (4) The tract of land is not sold or subdivided. A lease of
23 land shall not be considered a subdivision under this paragraph.

24 (b.2) Use of land under this section for wireless services
25 other than wireless telecommunications may only qualify if such
26 wireless services share a tower with a wireless
27 telecommunications provider as provided for in subsection (b.1).
28 Roll-back taxes shall be imposed upon the tract of land leased
29 by the landowner for wireless or cellular telecommunications
30 purposes and the fair market value of that tract of land shall

1 be adjusted accordingly. The lease of such a tract of land shall
2 not invalidate the preferential assessment of the land which is
3 not so leased, and such land shall continue to be eligible for
4 preferential assessment if it continues to meet the requirements
5 of section 3.

6 (b.3) The wireless or cellular communications provider shall
7 be solely responsible for obtaining required permits in
8 connection with any construction on a tract of land which it
9 leases pursuant to the provisions of this section for
10 telecommunications purposes. No permit requested pursuant to
11 this section shall be denied by a municipality for any reason
12 other than failure to strictly comply with permit application
13 procedures.

14 (c.1) (1) Land subject to preferential assessment may be
15 leased or otherwise devoted to the exploration for and removal
16 of oil and gas, including the extraction of coal bed methane,
17 and the development of appurtenant facilities, including, but
18 not limited to, new roads and bridges, pipelines and other
19 buildings or structures related to those activities.

20 (2) Portions of land subject to preferential assessment may
21 be used for exploration for or removal of oil and gas, including
22 the extraction of coal bed methane, and the development of
23 appurtenant facilities, including, but not limited to, new roads
24 and bridges, pipelines and other buildings or structures related
25 to those activities.

26 (c.2) Roll-back taxes shall be imposed upon those portions
27 of the land actually devoted to the activities set forth in
28 subsection (c.1)(2), excluding land devoted solely to subsurface
29 transmission or gathering lines which shall not be subject to
30 roll-back tax. The portion of land subject to roll-back tax

1 shall be the restored well site and any portion of land that
2 does not meet the requirements of section 3, as measured upon
3 the filing of a well site restoration report with the Department
4 of Environmental Protection as required by 25 Pa. Code 78.65
5 (relating to site restoration) or its subsequent version. Within
6 ten days of its receipt APPROVAL, a copy of this report shall be ←
7 furnished by the Department of Environmental Protection to the
8 county board for assessment appeals. The fair market value of
9 the restored well site and any land that does not meet the
10 requirements of section 3 shall be adjusted to begin on the date
11 of approval of a permit issued in accordance with the provisions
12 of the act of December 19, 1984 (P.L.1140, No.223), known as the
13 "Oil and Gas Act," and payable upon the filing of a well site
14 restoration report. The use of a portion of land under
15 subsection (c.1)(2) shall not invalidate the preferential
16 assessment of the land which is not so used, and the land shall
17 continue to receive preferential assessment if it continues to
18 meet the requirements of section 3.

19 (c.3) Notwithstanding subsection (c.2), no roll-back taxes
20 shall be imposed upon a landowner for activities related to the
21 exploration for and removal of oil and gas, including the
22 extraction of coal bed methane, conducted exclusively by parties ←
23 other than the landowner who hold rights to conduct such
24 activities pursuant to an instrument, conveyance or other
25 vesting of such rights, but not by virtue of a lease agreement,
26 occurring before the land received a preferential assessment
27 under this act. A county that has previously assessed roll back
28 taxes and adjusted fair market value on lands covered by
29 preferential assessment prior to the enactment of this
30 subsection shall comply with this subsection beginning on the

~~effective date of this subsection, and shall not be required to
implement the provisions of this subsection retroactively.
Counties that have not assessed roll back taxes and adjusted
fair market value for tracts of land utilized for oil and gas
drilling and appurtenant facilities prior to enactment of this
subsection may not implement the provisions of this subsection
retroactively.~~

OCCURRING AFTER THE EFFECTIVE DATE OF THIS SECTION IF ALL OF THE
FOLLOWING CONDITIONS ARE MET:

(1) THE ACTIVITIES ARE CONDUCTED EXCLUSIVELY BY PARTIES
OTHER THAN THE LANDOWNER.

(2) THE ACTIVITIES ARE CONDUCTED PURSUANT TO AN INSTRUMENT,
CONVEYANCE OR OTHER VESTING OF SUCH RIGHTS OCCURRING BEFORE THE
LAND RECEIVED A PREFERENTIAL ASSESSMENT UNDER THIS ACT AND
BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION.

(3) THE ACTIVITIES ARE NOT CONDUCTED PURSUANT TO A LEASE.

(c.4) The owner of property subject to preferential
assessment may lease or devote land covered by the preferential
assessment to be used for a wind power generation system.

(c.5) Roll-back taxes shall be imposed upon those portions
of the land actually devoted by the landowner for wind power
generation system purposes and the fair market value of those
portions of the land shall be adjusted accordingly. The wind
power generation system shall include the foundation of the wind
turbine and the area of the surface covered by appurtenant
structures, including, but not limited to, new roads and
bridges, transmission lines, substations and other buildings or
structures related to the wind power generation system. Roll-
back taxes on those portions of the land shall not invalidate
the preferential assessment of any other land covered by the

preferential assessment and such land shall continue to be
eligible for preferential assessment if it continues to meet the
requirements of section 3.

(c.6) The owner of property subject to preferential
assessment may lease or devote land covered by the preferential
assessment to be used for small noncoal surface mining, as
provided for under the act of December 19, 1984 (P.L.1093,
No.219), known as the Noncoal Surface Mining Conservation and
Reclamation Act. AT ANY ONE TIME, A LANDOWNER MAY ONLY HAVE ONE
ACTIVE SMALL NONCOAL SURFACE MINING PERMIT AS REQUIRED UNDER 25
PA. CODE § 77.108 (RELATING TO PERMIT FOR SMALL NONCOAL
OPERATIONS) PER APPLICATION FOR PREFERENTIAL ASSESSMENT.

(c.7) Roll-back taxes shall be imposed upon those portions
of land leased or devoted by the landowner for small noncoal
surface mining, and the fair market value of those portions of
the land shall be adjusted accordingly. Roll-back taxes on those
portions of the land shall not invalidate the preferential
assessment of the land which is not so leased or devoted, and
the land shall continue to be eligible for preferential
assessment if it continues to meet the requirements of section
3.

(d) Upon the death of a landowner receiving preferential
assessment under this act, if land subject to preferential
assessment is divided among the beneficiaries designated as
class A for inheritance tax purposes and, as a result of such
division, one or more tracts no longer meet the provisions of
section 3, no roll-back tax shall be due on any of the land
which previously qualified for preferential assessment. A
subsequent change in the use of one such beneficiary's portion
of the divided land shall not subject any other beneficiary's

1 portion of the divided land to roll-back taxes. Roll-back taxes
2 shall be due only in accordance with the provisions of section
3 5.1 on the tract held by the beneficiary who changes the use of
4 any portion of his or her inheritance.

5 (e) Any change in use of land subject to preferential
6 assessment shall be in compliance with the zoning ordinances of
7 the local municipality, if in effect.

8 Section 8. Roll-Back Taxes; Special Circumstances.--

9 (b) Unpaid roll-back taxes shall be a lien upon the property
10 collectible in the manner provided by law for the collection of
11 delinquent taxes. Roll-back taxes shall become due on the date
12 of change of use, or when a well site restoration report is
13 filed under section 6(c.2), or any other termination of
14 preferential assessment and shall be paid by the owner of the
15 land at the time of change in use, or any other termination of
16 preferential assessment, to the county treasurer or to the tax
17 claim bureau, as the case may be, whose responsibility it shall
18 be to make proper distribution of the taxes to the taxing bodies
19 wherein the property is located. Nothing in this section shall
20 be construed to require the taxing body of a taxing district in
21 which land enrolled in preferential use is situated to accept
22 the roll-back taxes due and payable to that taxing district if
23 the use of the land is changed for the purpose of granting or
24 donating such land to:

- 25 (1) a school district;
26 (2) a municipality;
27 (3) a county;
28 (4) a volunteer fire company;
29 (5) a volunteer ambulance service;
30 (6) a not-for-profit corporation, tax exempt under section

1 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3, 26
2 U.S.C. § 501(c)(3)), provided that, prior to accepting ownership
3 of the land, such corporation enters into an agreement with the
4 municipality wherein the subject land is located guaranteeing
5 that it will be used exclusively for recreational purposes, all
6 of which shall be available to the general public free of
7 charge. In the event the corporation changes the use of all or a
8 portion of the land or charges admission or any other fee for
9 the use or enjoyment of the facilities, the corporation shall
10 immediately become liable for all roll-back taxes and accrued
11 interest previously forgiven pursuant hereto; or

12 (7) a religious organization for construction or regular use
13 as a church, synagogue or other place of worship, including
14 meeting facilities, parking facilities, housing facilities and
15 other facilities which further the religious purposes of the
16 organization.

17 * * *

18 Section 4. The act is amended by adding a section to read:

19 Section 8.1. Removal of Land From Preferential Assessment.--

20 (a) A landowner receiving preferential assessment under this
21 act may remove land from preferential assessment if:

22 (1) the landowner notifies in writing the county assessor by
23 June 1 of the year immediately preceding the tax year for which
24 the removal is requested;

25 (2) the entire tract or tracts enrolled on a single
26 application for preferential assessment is removed from
27 preferential assessment; and

28 (3) the landowner pays rollback taxes on the entire tract or
29 tracts as provided for in section 5.1.

30 (b) Land removed from preferential assessment under this

1 section shall not be eligible to be subsequently reenrolled in
2 preferential assessment by the same landowner.

3 Section 5. This act shall take effect as follows:

4 (1) The addition of section 8.1 of the act shall take
5 effect in 60 days.

6 (2) The remainder of this act shall take effect
7 immediately.