

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 806

Session of  
1985

INTRODUCED BY MORRIS, SIRIANNI, HAYES, STUBAN, WASS, BATTISTO, COY, AFFLERBACH, SHOWERS, McCALL, FARGO, BOWLEY, HONAMAN, KUKOVICH, FEE, BUSH, LIVENGOD, GREENWOOD, FLICK, GODSHALL, RUDY, E. Z. TAYLOR, LETTERMAN, COLE, MERRY, JOSEPHS, DORR, DIETZ, CLYMER, JOHNSON, NOYE, SEMMEL, HERMAN, YANDRISEVITS, BELFANTI, RYBAK, STABACK, BALDWIN, HERSHEY, SCHULER, BARLEY, SCHEETZ, CHADWICK, ARGALL, STEIGHNER AND BROUJOS, MARCH 26, 1985

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 17, 1986

## AN ACT

1 Amending the act of June 30, 1981 (P.L.128, No.43), entitled "An  
2 act authorizing the creation of agricultural areas," further  
3 providing for agricultural areas, public hearings, evaluation  
4 criteria, decisions and reviews of proposed areas, appeals,  
5 limitation on local agencies, policy of Commonwealth  
6 agencies, limitations on exercise of eminent domain and  
7 purchases of development easements in agricultural areas;  
8 making an appropriation; and making editorial changes.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 Section 1. Sections 2, 3, 5, 6, 7, 8, 9, 11, 13, and 14 of  
12 the act of June 30, 1981 (P.L.128, No.43), known as the  
13 Agricultural Area Security Law, are amended to read:

14 Section 2. Statement of legislative findings.

15 It is the declared policy of the Commonwealth to conserve and  
16 protect and to encourage the development and improvement of its  
17 agricultural lands for the production of food and other

1 agricultural products. It is also the declared policy of the  
2 Commonwealth to conserve and protect agricultural lands as  
3 valued natural and ecological resources which provide needed  
4 open spaces for clean air, as well as for aesthetic purposes.  
5 Article VIII, section 2 of the Constitution of Pennsylvania  
6 provides that the General Assembly may, by law, establish  
7 standards and qualifications for agricultural reserves.  
8 Agriculture in many parts of the Commonwealth is under urban  
9 pressure from expanding metropolitan areas. This urban pressure  
10 takes the form of scattered development in wide belts around  
11 urban areas, and brings conflicting land uses into  
12 juxtaposition, creates high costs for public services, and  
13 stimulates land speculation. When this scattered development  
14 extends into good farm areas, ordinances inhibiting farming tend  
15 to follow, farm taxes rise, and hopes for speculative gains  
16 discourage investments in farm improvements. Many of the  
17 agricultural lands in the Commonwealth are in jeopardy of being  
18 lost for any agricultural purposes. Certain of these lands  
19 constitute unique and irreplaceable land resources of Statewide  
20 importance. It is the purpose of this act to provide [a] means  
21 by which agricultural land may be protected and enhanced as a  
22 viable segment of the Commonwealth's economy and as an economic  
23 and environmental resource of major importance.

24 It is further the purpose of this act to:

25 (1) Encourage landowners to make a long-term commitment  
26 to agriculture by offering them financial incentives and  
27 security of land use.

28 (2) Protect farming operations in agricultural areas  
29 from incompatible nonfarm land uses that may render farming  
30 impracticable.

1       (3) Assure permanent conservation of productive  
2       agricultural lands in order to protect the agricultural  
3       economy of this Commonwealth.

4       (4) Provide compensation to landowners in exchange for  
5       their relinquishment of the right to develop their private  
6       property.

7       (5) Leverage State agricultural easement purchase funds  
8       and protect the investment of taxpayers in agricultural  
9       conservation easements.

10 Section 3. Definitions.

11       The following words and phrases when used in this act shall  
12 have the meanings given to them in this section, unless the  
13 context clearly indicates otherwise:

14       "Advisory committee." An Agricultural Area Advisory  
15 Committee.

16       "Agricultural area." A unit of 500 or more acres of land  
17 used for the agricultural production of crops, livestock and  
18 livestock products under the ownership of one or more persons.

19       "Agricultural conservation easement." An interest in land,  
20 less than fee simple, which interest represents the right to  
21 prevent the development or improvement of the land for any  
22 purpose other than agricultural production. The easement may be  
23 granted by the owner of the fee simple to any third party or to  
24 the Commonwealth, to a county governing body or to a unit of  
25 local government. It may be granted for a term of years or in  
26 perpetuity, as the equivalent of covenants running with the  
27 land.

28       "Agricultural production." The production for commercial  
29 purposes of crops, livestock and livestock products, but not  
30 land or portions thereof used for processing or retail

1 merchandising of such crops, livestock or livestock products.

2 "Board" or "State board." The Agricultural [Lands  
3 Condemnation Approval] Conservation Board.

4 "County governing body." The county board of commissioners  
5 or other designated council of representatives under home rule  
6 charters.

7 "Crops, livestock and livestock products." Include but are  
8 not limited to:

9 (1) Field crops, including corn, wheat, oats, rye,  
10 barley, hay, potatoes and dry beans.

11 (2) Fruits, including apples, peaches, grapes, cherries  
12 and berries.

13 (3) Vegetables, including tomatoes, snap beans, cabbage,  
14 carrots, beets, onions and mushrooms.

15 (4) Horticultural specialties, including nursery stock  
16 ornamental shrubs, ornamental trees and flowers.

17 (5) Livestock and livestock products, including cattle,  
18 sheep, hogs, goats, horses, poultry, furbearing animals,  
19 milk, eggs and furs.

20 (6) Timber, wood and other wood products derived from  
21 trees.

22 (7) Aquatic plants and animals and their byproducts.

23 ["Development easement." An interest in land, less than fee  
24 simple title, which interest represents the inchoate right to  
25 develop such lands for residential, commercial, recreational or  
26 industrial uses. This right shall become absolute when the owner  
27 of a development easement either owns the land to which the  
28 easement belongs or has a written agreement with the owner of  
29 the land to use the development easement on the land: Provided,  
30 however, That the use of the development easement is in

1 compliance with all local zoning ordinances.]

2 "Governing body." The governing body of a local government  
3 unit.

4 "Local government unit." Any city, borough, township or  
5 town.

6 "Normal farming operations." The customary and generally  
7 accepted activities, practices, and procedures that farmers  
8 adopt, use, or engage in year after year in the production and  
9 preparation for market of [poultry] crops, livestock, and  
10 [their] livestock products and in the production and harvesting  
11 of agricultural, agronomic, horticultural, silvicultural, and  
12 [aquicultural] aquacultural crops and commodities.

13 "Planning commission." A local government planning  
14 commission OR AGENCY, or if the county planning commission, then <—  
15 that entity which has been designated by the county  
16 commissioners to establish and foster a comprehensive plan for  
17 land management and development within the county, or if a local  
18 planning commission, then that entity which has been designated  
19 by the local government unit governing body to establish and  
20 foster a comprehensive plan for land management and development  
21 within the local government unit which is compatible with the  
22 county comprehensive plan.

23 "Viable agricultural land." Land ~~which has been in active~~ <—  
24 ~~farm use for three out of the immediately preceding five years,~~  
25 ~~which is~~ suitable for agricultural production and which will  
26 continue to be economically feasible for such use if real estate  
27 taxes, farm use restrictions, and speculative activities are  
28 limited to levels approximating those in commercial agricultural  
29 areas not influenced by the proximity of urban and related  
30 nonagricultural development.

1 Section 5. Agricultural areas.

2 (a) Proposals for creation.--Any owner or owners of land may  
3 submit a proposal to the governing body for the creation of an  
4 agricultural area within such local government unit, provided  
5 that such owner or owners own at least 500 acres of viable  
6 agricultural land proposed to be included in the area. The  
7 proposed area may also consist of two or more noncontiguous  
8 parcels or areas[: Provided, however, That the], providing that:

9 (1) The governing body may limit the minimum acreage  
10 requirements in noncontiguous parcels in an agricultural  
11 area[: And, provided further, That no minimum].

12 (2) Minimum acreage [requirement] requirements shall be  
13 [more than] 50] TEN acres or less. <—

14 (a.1) Submitting the proposal.--Such proposal for creation  
15 of an agricultural area shall be submitted in such manner and  
16 form as may be prescribed by the governing body of the local  
17 government unit wherein the proposed area is situated and shall  
18 include a description of the proposed area, including the  
19 boundaries thereof. [If the proposed area is situated in more  
20 than one local government unit, the proposal shall be submitted  
21 to the governing bodies of all local government units affected.]

22 (a.2) Proposals for agricultural areas in more than one  
23 local government unit.--If the land included in a proposal for  
24 an agricultural area is situated in more than one local  
25 government unit, the proposal shall be submitted to, and  
26 approval of the proposal shall be sought from, the governing  
27 body of each such local government unit affected. A rejection by  
28 a governing body shall exclude that portion of the proposal  
29 which is situated within the local government unit. However,  
30 such rejection shall not preclude the approval of the remaining

1 portion of the proposal as an agricultural area by the governing  
2 body of the other affected local government units, provided that  
3 the total acreage approved is at least 500 acres and that such  
4 approved portion meets all other requirements imposed under this  
5 act for agricultural areas.

6 (b) Notice.--Upon the receipt of such a proposal, the  
7 governing body shall thereupon provide notice of such proposal  
8 by publishing a notice in a newspaper having general circulation  
9 within the proposed area and by posting such notice in five  
10 conspicuous places within, adjacent or near to the proposed  
11 area. If the governing body fails to provide the required notice  
12 within 15 days of receiving a proposal, a person who is  
13 adversely affected by this inaction may bring an action in  
14 mandamus to compel compliance. The notice shall contain the  
15 following information:

16 (1) A statement that a proposal for an agricultural area  
17 has been filed with the governing body pursuant to this act.

18 (2) A statement that the proposal will be on file open  
19 to public inspection in the office of the local government  
20 unit.

21 (3) A statement that any [municipality whose territory  
22 encompasses] local government unit encompassing or adjacent  
23 to the proposed area, or any landowner who owns the land  
24 proposed to be included within the proposed area, or any  
25 landowner with lands adjacent or near to the proposed area  
26 who wishes such lands to be included or not included therein,  
27 may propose modifications of the proposed area in such form  
28 and manner as may be prescribed by the governing body. The  
29 statement shall indicate that objections to the proposal and  
30 proposed modifications to the proposal must be filed with the

governing body and the planning commission within 15 days of the date of publication of the notice.

[(4) A statement that any proposed modification must be filed with the governing body and the planning commission within 30 days after the publication of such notice.

(5)] (4) A statement that at the termination of the {30-day} ~~15-day~~ period, the proposal and proposed modifications will be submitted to the planning commission and the advisory committee, and that thereafter a public hearing will be held on the proposal, proposed modifications and recommendations of the planning commission and advisory committee.

(c) Modification proposals.--The governing body shall receive any proposals for modifications of such proposal which may be submitted by such landowners or [municipalities] ~~local government units~~ within [30] ~~15~~ days after the publication of such notice. WITHIN 30 DAYS AFTER THE PUBLICATION OF SUCH NOTICE] LOCAL GOVERNMENT UNITS UP TO SEVEN DAYS PRIOR TO ADVERTISEMENT OF PUBLIC HEARING AS PROVIDED IN SECTION 6(A).

(d) Report by planning commission.--The governing body shall, upon the termination of such {30-day} ~~15-day~~ period, refer such proposal and proposed modifications to the planning commission[, which shall, within 45 days,]. The planning commission shall have up to 30 45 days to review the proposal and proposed modifications and report to the governing body the potential effect of such proposal and proposed modifications upon the local government's planning policies and objectives. The failure of the planning commission to submit a report within 30 45 days shall not prohibit the governing body from conducting further proceedings or from further exercising its authority pursuant to this act.



1 (e) Referral to advisory committee.--The governing body  
2 shall also, upon the termination of such ~~30-day~~ 15-day period, <—  
3 refer such proposal and proposed modifications to the  
4 Agricultural Area Advisory Committee[, which shall, within 45  
5 days]. The committee shall have up to 30 45 days to review the <—  
6 proposal and proposed modifications and report to the governing  
7 body its recommendations concerning the proposal and proposed  
8 modifications. The failure of the advisory committee to submit a  
9 report within 30 45 days shall not prohibit the governing body <—  
10 from conducting further proceedings or from further exercising  
11 its authority pursuant to this act.

12 Section 6. Public hearings.

13 (a) Hearings.--The governing body[, ] shall hold a public  
14 hearing relative to the proposed agricultural area upon receipt  
15 of the reports from the advisory committee and the planning  
16 commission[, hold a public hearing relative to the proposed  
17 agricultural area] or upon expiration of the 30-day 45-DAY <—  
18 period as provided in section 5.

19 (b) Place of hearing.--The hearing shall be held at a place  
20 within the proposed area or otherwise readily accessible to the  
21 proposed area, SUCH AS A MUNICIPAL BUILDING. <—

22 (c) Notice of hearing.--[A] Pursuant to the act of July 19,  
23 1974 (P.L.486, No.175), referred to as the Public Agency Open  
24 Meeting Law or as the Sunshine Law, a hearing notice shall be  
25 published in a newspaper having a general circulation within the  
26 proposed area [and]. In addition, notice shall be given in  
27 writing [to those municipalities whose territory encompasses the  
28 proposed area and any proposed modifications and] to those  
29 landowners who proposed modifications pursuant to section 5(c)[,  
30 and] or whose land is included in proposed modifications, and to

1 all landowners within the proposed agricultural area. Notice  
2 also shall be given by posting such notice in five conspicuous  
3 places within, adjacent or near to the proposed area. Such  
4 notice shall contain the following information:

5 (1) A statement of the time, date and place of the  
6 public hearing.

7 (2) A description of the proposed area, any proposed  
8 additions or deletions and any recommendations of the  
9 planning commission or advisory committee.

10 (3) A statement that the public hearing will be held  
11 concerning:

12 (i) The original proposal.

13 (ii) Any written amendments proposed during the [30-  
14 day] ~~15-day~~ review period. <—

15 (iii) Any recommendations proposed by the  
16 Agricultural Area Advisory Committee and the planning  
17 commission.

18 Section 7. Evaluation criteria.

19 (a) Factors to be considered.--The following factors shall  
20 be considered by the planning commission, advisory committee,  
21 and at any public hearing:

22 (1) [The viability of active farming within the proposed  
23 area and in areas near or adjacent thereto.

24 (2) The presence of any viable farm lands within the  
25 proposed area and adjacent thereto that are not now in active  
26 farming.

27 (3) The nature and extent of land uses other than active  
28 farming within the proposed area and near or adjacent  
29 thereto.

30 (4) Local government unit developmental patterns and

needs.

(5) The local government unit's comprehensive plan.

(6) Any other matter which may be relevant.

(b) Other factors.--In judging viability the following factors shall be considered:

(1) Soil.

(2) Climate.

(3) Topography.

(4) Markets for farm products.

(5) The extent and nature of farm improvements.

(6) The present status of farming.

(7) Anticipated trends in agricultural economic conditions and technology.

(8) Any other natural or economic factors as may be relevant.

(c)] Land proposed for inclusion in an agricultural area shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if at least 50% in the aggregate of the land to be included in an agricultural area falls into one of the following categories: land whose soils are classified in Soil Conservation Service Capability Classes I through IV, excepting IV(e); land which falls within the Soil Conservation Service classification of "unique farm land"; or land whose soils do not meet Capability Classes I through IV but which is currently in active farm use and is being maintained in accordance with the soil erosion and sedimentation plan applicable to such land.

(2) Land proposed for inclusion in an agricultural security area shall be compatible with local government unit

1 comprehensive plans and with county comprehensive plans. Any  
2 zoning shall permit agricultural use but need not exclude  
3 other uses.

4 (3) The land proposed for inclusion in the agricultural  
5 area, and any additions which are proposed subsequently,  
6 shall be viable agricultural land.

7 (4) Additional factors to be considered are the extent  
8 and nature of farm improvements, anticipated trends in  
9 agricultural economic and technological conditions and any  
10 other matter which may be relevant.

11 (b) Resource materials.--In considering the viability  
12 factors as set forth in this section, various resource materials  
13 shall be used, including, but not limited to, the following:

14 (1) Soil surveys of the Pennsylvania State University.

15 (2) Soil surveys and other information provided by the  
16 National Cooperative Soil Survey.

17 (3) Soil survey maps prepared by the United States Soil  
18 Conservation Service.

19 (4) The United States census of agricultural categories  
20 of land use classes.

21 (5) [Agricultural viability maps prepared by the  
22 Department of Agriculture.

23 (6)] Any other relevant published data, maps, charts, or  
24 results of soil or land use surveys made by any county, State  
25 or Federal agency.

26 Section 8. Decision on proposed area.

27 (a) Action by governing body.--The governing body, [after  
28 receiving the reports of the planning commission and the  
29 advisory committee, and after such public hearing] upon  
30 completion of the procedures and considerations prescribed in

1 sections 5, 6 and 7, may adopt the proposal or any modification  
2 of the proposal [they deem] the governing body deems  
3 appropriate, including the inclusion, to the extent feasible, of  
4 adjacent viable farm lands, and, the exclusion, to the extent  
5 feasible, of nonviable farm land and nonfarm land. The existence  
6 of utility facilities on the proposed area shall not prevent the  
7 [designation of the area as "agricultural"] adoption of such  
8 area as an agricultural area nor shall the rights of utilities  
9 with respect to the existing facilities be disturbed or affected  
10 by such [designation] adoption. The governing body shall act to  
11 adopt or reject the proposal, or any modification [of it], no  
12 later than ~~180~~ 90 days from the date the proposal was <—  
13 originally submitted. Failure by the governing body to act  
14 within this ~~90-day~~ 180-DAY period shall be deemed adoption of <—  
15 the proposal without modification.

16 (b) Effective date of creation of area.--[The proposed] An  
17 agricultural area[,] shall become effective upon the adoption of  
18 [same] the proposal or its modification by the governing body or  
19 upon expiration of the ~~90-day~~ 180-DAY period as provided in <—  
20 subsection (a). If the proposal has included land situated in  
21 more than one local government unit, the agricultural area shall  
22 become effective upon adoption by the local government unit or  
23 units of such portion of the proposal or proposed modifications  
24 as will meet the minimum acreage and other requirements of an  
25 agricultural area provided in this act. Subsequent adoption of  
26 the remaining portion shall immediately effectuate such portion  
27 as an agricultural area.

28 (c) Filing of area description.--[Upon] Within ten days of  
29 the creation of an agricultural area, a description thereof  
30 shall be filed by the governing body with the recorder of deeds,

1 who shall record the filing, and with the planning [commission]  
2 commissions of the county and of the local government unit.  
3 Filing shall be done in a manner which is sufficient to give  
4 notice to all persons who have, may acquire or may seek to  
5 acquire an interest in land in or adjacent to the created  
6 agricultural area. Upon the failure of the governing body or  
7 recorder of deeds to file or record the created agricultural  
8 area in accordance with the time or manner requirements  
9 prescribed in this subsection, any person adversely affected may  
10 file a petition with the court of common pleas to compel  
11 immediate compliance with the provisions of this subsection.

12 (d) Participation.--Participation in the agricultural area  
13 shall be available at its creation on a voluntary basis to  
14 landowners within the jurisdiction of the governing body  
15 including those not among the original petitioners [on a  
16 voluntary basis]. The addition or deletion of land in the  
17 agricultural area shall only occur after seven years or whenever  
18 the agricultural area is subject to review by the [local]  
19 governing body.

20 Section 9. Review of area.

21 (a) Review by governing body.--The governing body shall  
22 review any area created under [this] section 8 seven years after  
23 the date of its creation and every seven years thereafter. In  
24 conducting such review, the governing body shall ask for the  
25 recommendations of the planning commission, the county planning  
26 commission and the advisory committee, and shall, at least 120  
27 days prior to the end of the seventh year and not more than 180  
28 days prior to such date, hold a public hearing at a place within  
29 the area or otherwise readily accessible to the area [upon  
30 notice]. Notice of the public hearing shall be published before

1 the hearing in a newspaper having a general circulation within  
2 the area [by posting]. In addition, notice shall be posted  
3 before the hearing in five conspicuous places within, adjacent  
4 or near the area and [by] individual notice, in writing, shall  
5 be given to those [municipalities whose territories encompass  
6 the area and the person] persons owning land within the area.  
7 The governing body, after [receiving the reports of] allowing  
8 the planning commission, the county planning commission and the  
9 advisory committee sufficient time to submit recommendations,  
10 and after the public hearing, may terminate the area at the end  
11 of such seven-year period [by filing a notice of termination  
12 with the recorder of deeds and with the planning commission] or  
13 it may modify the area in the same manner as is provided in this  
14 act for the creation of agricultural areas. Within ten days of  
15 its action of termination or modification, the governing body  
16 shall file a notice of termination or modification with the  
17 recorder of deeds, who shall record such notice in such manner  
18 and place as has been provided in the original recording of the  
19 agricultural area. The governing body shall also file a notice  
20 of termination or modification with the planning commissions of  
21 the county and of the local government unit. If the governing  
22 body does not act, or if a modification of an area is rejected,  
23 the area shall [continue as originally constituted] be deemed to  
24 be adopted without modification for another seven years.

25 (b) [Landowner withdrawal] Changes in participation.--  
26 Landowners who wish their land to be withdrawn or included in  
27 the agricultural area shall notify the local governing unit of  
28 their intent [at least 120 days] ~~in writing~~ before the end of <—  
29 the {seventh} ~~sixth~~ year.] IN WRITING AT LEAST 180 DAYS BEFORE <—  
30 THE END OF THE SEVENTH YEAR.

1       (c) Interim review.--If, within the seven-year period, 10%  
2 of the land within the agricultural area is diverted to  
3 residential or nonagricultural commercial development, the  
4 governing body may review the diversion and may request, in  
5 writing, that the local and county planning commissions and the  
6 agricultural advisory committee study its review and make  
7 recommendations within 30 days of the written request. The  
8 governing body shall thereupon conduct a public hearing, after  
9 providing the same notice as that which is required under  
10 section 6(c). The hearing shall be held no sooner than 45 days  
11 after the governing body has submitted written requests for  
12 review and recommendation to the planning commissions and  
13 advisory committee. The governing body then may terminate or  
14 modify the agricultural area.

15 Section 11. Limitation on local regulations.

16       (a) General rule.--Every municipality or political  
17 subdivision [creating] within which an agricultural area is  
18 created shall encourage the continuity, development and  
19 viability of agriculture within such an area by not enacting  
20 local laws or ordinances [within such an area in a manner] which  
21 would unreasonably restrict farm structures or farm practices  
22 within the area in contravention of the purposes of this act  
23 unless such restrictions or regulations bear a direct  
24 relationship to the public health or safety.

25       (b) Public nuisance.--Any municipal or political subdivision  
26 law or ordinance defining or prohibiting a public nuisance shall  
27 exclude from the definition of such nuisance any agricultural  
28 activity or operation conducted using normal farming operations  
29 within an agricultural area as permitted by this act if such  
30 agricultural activity or operation does not bear a direct



1 relationship to the public health and safety.

2 Section 13. Limitation on [exercise of eminent domain] certain  
3 governmental actions.

4 (a) Approval required for condemnation and for certain other  
5 actions by an agency of the Commonwealth.--No agency of the  
6 Commonwealth having or exercising powers of eminent domain shall  
7 condemn for any purpose any land within any agricultural area  
8 which land is being used for productive agricultural purposes  
9 (not including the growing of timber) unless prior approval has  
10 been obtained in accordance with the criteria and procedures  
11 established in this section from the Agricultural Lands  
12 Condemnation Approval Board as established in section 306 of the  
13 act of April 9, 1929 (P.L.177, No.175), known as "The  
14 Administrative Code of 1929." The condemnation approval  
15 specified by this subsection shall not be required for an  
16 underground public utility facility or for any facility of an  
17 electric cooperative corporation or for any public utility  
18 facility the necessity for and the propriety and environmental  
19 effects of which has been reviewed and ratified or approved by  
20 the Pennsylvania Public Utility Commission or the Federal Energy  
21 Regulatory Commission. In addition, all State-funded development  
22 projects which might affect land in established agricultural  
23 areas shall be reviewed by the appropriate local advisory  
24 committee and by the Agricultural Lands Condemnation Approval  
25 Board. Each reviewing body may suggest any modification to the  
26 State-funded development projects which ensures the integrity of  
27 the agricultural areas against nonfarm encroachment.

28 (b) Approval required for condemnation by a political  
29 subdivision, authority, public utility or other body.--No  
30 political subdivision, authority, public utility or other body

1 having or exercising powers of eminent domain shall condemn any  
2 land within any agricultural area for any purpose, unless prior  
3 approval has been obtained from Agricultural Lands Condemnation  
4 Approval Board and from each of the following bodies: the  
5 governing bodies of the [municipalities] local government units  
6 encompassing the agricultural area, the county [commissioners]  
7 governing body, and the Agricultural Area Advisory Committee.  
8 Review by the [board] Agricultural Lands Condemnation Approval  
9 Board and the other indicated bodies shall be in accordance with  
10 the criteria and procedures established in this section. The  
11 condemnation approvals specified by this subsection shall not be  
12 required for an underground public utility facility or for any  
13 facility of an electric cooperative corporation or for any  
14 public utility facility the necessity for and the propriety and  
15 environmental effects of which has been reviewed and ratified or  
16 approved by the Pennsylvania Public Utility Commission or the  
17 Federal Energy Regulatory Commission, regardless of whether the  
18 right to establish and maintain such underground or other public  
19 utility facility is obtained by condemnation, or by agreement  
20 with the owner.

21 (c) Notice.--Any condemnor wishing to condemn property the  
22 approval for which is required under this section shall at least  
23 30 days prior to taking such action notify each of the foregoing  
24 bodies that such action is contemplated, and no such  
25 condemnation shall be effective until 60 days following the  
26 receipt of such notice.

27 (d) Review by Agricultural Lands Condemnation Approval Board  
28 and other bodies.--

29 (1) Upon receipt of such notice the [board provided for  
30 in subsection (a)] Agricultural Lands Condemnation Approval

1 Board or the bodies provided for in subsection (b) jointly or  
2 separately shall review the proposed condemnation in  
3 accordance with the applicable criteria established in  
4 paragraph (2).

5 (2) (i) In the case of condemnation for highway  
6 purposes (but not including activities relating to  
7 existing highways such as, but not limited to, widening  
8 roadways, the elimination of curves or reconstruction,  
9 for which no approval is required) and in the case of  
10 condemnation for the disposal of solid or liquid waste  
11 material, the [board] Agricultural Lands Condemnation  
12 Approval Board or other appropriate reviewing body shall  
13 approve the proposed condemnation only if it determines  
14 there is no reasonable and prudent alternative to the  
15 utilization of the land within the agricultural area for  
16 the project.

17 (ii) In all other cases not otherwise specifically  
18 provided for, the [board] Agricultural Lands Condemnation  
19 Approval Board or other appropriate reviewing body shall  
20 approve the proposed condemnation only if it determines  
21 that:

22 (A) the proposed condemnation would not have an  
23 unreasonably adverse affect upon the preservation and  
24 enhancement of agriculture or municipal resources  
25 within the area or upon the environmental and  
26 comprehensive plans of the county, municipality and  
27 the Commonwealth, or upon the goals, resource plans,  
28 policies or objectives thereof; or

29 (B) there is no reasonable and prudent  
30 alternative to the utilization of the lands within

1 the agricultural area for the project.

2 (e) Public hearings.--Within such 60-day period the  
3 Agricultural Lands Condemnation Board and other indicated  
4 bodies, as appropriate, shall hold a public hearing concerning  
5 the proposed condemnation at a place within or otherwise readily  
6 accessible to the area. Timely notice of such hearing shall be  
7 placed in a newspaper having a general circulation within the  
8 area and a written notice shall be posted at five conspicuous  
9 places within or adjacent to the area. Individual written notice  
10 shall also be given to all [municipalities] local government  
11 units encompassing all or part of the area, to the proposed  
12 condemnor, and to the owners of the land proposed to be  
13 condemned.

14 (f) Findings and decisions.--The Agricultural Lands  
15 Condemnation Approval Board and other indicated bodies, as  
16 appropriate, shall render findings and decisions on or before  
17 the expiration of such 60-day period and likewise within such  
18 period shall report the same to the proposed condemnor, the  
19 [municipalities] local government units affected and any party  
20 who [shall file] files an appearance at such hearing. If the  
21 [board] Agricultural Lands Condemnation Board or any other  
22 indicated body fails to act within the 60-day period, the  
23 condemnation shall be deemed approved.

24 (g) Injunctions.--The Agricultural Lands Condemnation  
25 Approval Board may request the Attorney General or the bodies  
26 may request their solicitor to bring an action to enjoin any  
27 such condemnor from violating any of the provisions of this  
28 section.

29 (h) Emergencies excepted.--This section shall not apply to  
30 any emergency project which is immediately necessary for the

1 protection of life or property.

2 Section 14. [Purchase of development easement in agricultural  
3 areas.

4 (a) Program to purchase easements.--After the establishment  
5 of an agricultural area by the governing body, the county  
6 governing body may authorize a program to purchase the  
7 development easements for land within an agricultural area. The  
8 program shall be administered by the county planning commission  
9 and a farmer member from each Agricultural Area Advisory  
10 Committee within the county.

11 (b) Funds for purchases.--The county governing body may use  
12 moneys from its general fund and/or incur debt to make available  
13 moneys to purchase the development easements in agricultural  
14 areas. The incurring of debt by the county governing body shall  
15 be consistent with all present laws and procedures imposed on  
16 counties for such action.

17 (c) Offers.--Agents, employees or officials of the county  
18 planning commission shall be responsible to make such offers and  
19 to enter into such negotiations as are necessary with any owner  
20 of lands in an agricultural area, in order to purchase any  
21 development easements. Nothing in this act shall be construed as  
22 to require any owner of land in an agricultural area to sell or  
23 transfer any development easements thereto. An owner may reject  
24 any offer by any official of the county planning commission to  
25 purchase any development easements. The price for the purchase  
26 of development easements shall be mutually agreed to by the  
27 owner of the land affected and the county governing body. All  
28 such contracts for purchase shall be in writing.

29 (d) Sale of land.--A county governing body may sell any of  
30 its acquired development easements as those easements are

1 defined under this act: Provided, That the local governing body,  
2 which has jurisdiction over the effected land, approves the sale  
3 by a majority vote of its members: And, further provided, That  
4 the present owner of the land affected has refused to purchase  
5 such development easement.]

6 Purchase of agricultural conservation easements.

7 (a) Agricultural Conservation Board.--There is established  
8 in the Department of Agriculture of the Commonwealth the  
9 Agricultural Conservation Board. The board shall have authority  
10 to administer a program for purchasing agricultural conservation  
11 easements from landowners whose land is within agricultural  
12 areas.

13 (1) The board shall consist of ~~16~~ 17 members, of which <—  
14 the composition and terms shall be in accordance with the  
15 following:

16 (i) There shall be nine ex officio members of the  
17 board: the Secretary of Agriculture, who shall serve as  
18 the board's chairman; the Secretary of Community Affairs;  
19 the Secretary of Environmental Resources; the Chairman  
20 and the Minority Chairman of the House Agriculture and  
21 Rural Affairs Committee, or their designees; the Chairman  
22 and the Minority Chairman of the Senate Agriculture and  
23 Rural Affairs Committee, or their designees; the Dean of  
24 the College of Agriculture of the Pennsylvania State  
25 University and the Chairman of the State Planning Board.

26 (ii) One member each shall be appointed by the  
27 Speaker of the House, the House Minority Leader, the  
28 President pro tempore of the Senate and the Senate  
29 Minority Leader, who shall, at the time of appointment,  
30 be an owner and operator of at least one commercial farm

1 in this Commonwealth. The term of the initial appointee  
2 of the President pro tempore shall be four years, the  
3 term of the initial appointee of the Speaker of the House  
4 of Representatives shall be three years, the term of the  
5 initial appointee of the Senate Minority Leader shall be  
6 two years and the term of the initial appointee of the  
7 House Minority Leader shall be one year. Thereafter, the  
8 terms of those appointed herein shall be four years,  
9 except that the term of a person appointed to replace  
10 another member whose term has not expired shall be only  
11 the unexpired portion of that term. Members may be  
12 reappointed to successive years.

13 (iii) Three FOUR members shall be appointed by the <—  
14 Governor. One member shall be a current member of the  
15 governing body of a county, one shall be a current member  
16 of the governing body of a ~~township or borough~~ and THE <—  
17 LOCAL GOVERNING UNIT, one shall be a person who is  
18 recognized as having significant knowledge in  
19 agricultural fiscal and financial matters AND ONE SHALL <—  
20 BE A RESIDENTIAL BUILDING CONTRACTOR. Initially, one  
21 member shall be appointed for a term of one year, one  
22 member shall be appointed for a term of two years and one  
23 member shall be appointed for a term of three years, and  
24 thereafter, the terms of all members appointed herein  
25 shall be three years, except that the term for a person  
26 appointed to replace another member whose term has not  
27 expired shall be only the unexpired portion of that term.  
28 Members may be reappointed to successive terms.

29 (iv) Nine members shall constitute a quorum for  
30 purposes of conducting meetings and official actions

1 pursuant to authority given to the board under this act.

2 (2) The board shall have the following powers:

3 (i) To adopt rules and regulations for the  
4 administration of the Statewide program for purchasing  
5 agricultural conservation easements.

6 (ii) To certify programs adopted by county governing  
7 bodies for purchasing agricultural conservation  
8 easements, in accordance with the criteria set forth in  
9 subsection (b), and to withdraw certification, after  
10 affording the county governing body notice and an  
11 opportunity for a hearing, if such county programs fail  
12 to meet the criteria.

13 (iii) To distribute State funds among counties for  
14 the purchase of agricultural conservation easements, in  
15 accordance with the criteria set forth in subsection (d).

16 (iv) To use the appropriated funds to hire staff to  
17 administer the program on a day-to-day basis.

18 (v) To maintain a central repository of records of  
19 county programs for purchasing agricultural conservation  
20 easements and of farm lands subject to these easements.

21 (vi) To exercise other discretionary powers as may  
22 be necessary and appropriate to carry out the functions  
23 of the Statewide program for purchasing agricultural  
24 conservation easements.

25 (b) County programs.--After the establishment of an  
26 agricultural area by the governing body, the county governing  
27 body may authorize a program for purchasing agricultural  
28 conservation easements from landowners whose land is within an  
29 agricultural area. The program shall be administered by a county  
30 agricultural conservation board.



1       ~~(1) The county agricultural conservation board shall be~~ <—  
2       ~~composed of seven members appointed by the county governing~~  
3       ~~body. It shall be chaired by the chairman of the county~~  
4       ~~governing body, and its remaining members shall be appointed~~  
5       ~~from among the following groups: three members shall be~~  
6       ~~current farmer members of agricultural area advisory~~  
7       ~~committees formed within the county, one shall be a current~~  
8       ~~member of the governing body of a township or borough located~~  
9       ~~within the county, and two shall be selected at the pleasure~~  
10       ~~of the county governing body. With the exception of the~~  
11       ~~chairman of the county governing body, who shall serve so~~  
12       ~~long as he remains chairman of the county governing body, the~~  
13       ~~term of all members shall be three years, except that the~~  
14       ~~term for a person appointed to replace another member whose~~  
15       ~~term has not expired shall be only the unexpired portion of~~  
16       ~~that term. Members may be reappointed to successive terms.~~

17       (1) THE COUNTY AGRICULTURAL CONSERVATION BOARD SHALL BE <—  
18       COMPOSED OF FIVE, SEVEN OR NINE MEMBERS APPOINTED BY THE  
19       COUNTY GOVERNING BODY, WITH THE EXCEPTION OF THE CHAIRMAN WHO  
20       SHALL BE APPOINTED BY THE CHAIRMAN OF THE COUNTY GOVERNING  
21       BODY. ITS MEMBERS SHALL BE APPOINTED FROM AMONG THE FOLLOWING  
22       GROUPS: THE NUMBER OF FARMERS SHALL CONSTITUTE ONE LESS THAN  
23       A MAJORITY OF THE BOARD, ONE MEMBER SHALL BE A CURRENT MEMBER  
24       OF THE GOVERNING BODY OF A TOWNSHIP OR BOROUGH LOCATED WITHIN  
25       THE COUNTY, AND THE OTHER MEMBERS SHALL BE SELECTED AT THE  
26       PLEASURE OF THE COUNTY GOVERNING BODY. THE TERM OF ALL  
27       MEMBERS SHALL BE THREE YEARS, EXCEPT FOR THE CHAIRMAN, WHO  
28       SHALL BE APPOINTED ANNUALLY.

29       (2) The county board shall have the following powers:

30             (i) To adopt rules and regulations for administering

1 a countywide program for purchasing agricultural  
2 conservation easements in accordance with the provisions  
3 of this act. This includes, but is not limited to, rules  
4 and regulations for the submission of applications by  
5 landowners, for appraisal of property in accordance with  
6 standards and procedures adopted by the board and for  
7 selection of parcels of farm land on which agricultural  
8 conservation easements are to be purchased.

9 (ii) To purchase agricultural conservation easements  
10 on farm lands within agricultural areas. If State funds  
11 are used for this purpose, the county program must be  
12 certified by the board.

13 (iii) To use moneys approved by the county governing  
14 body from the county general fund to hire staff and  
15 administer the program.

16 (iv) To use moneys distributed by the board and to  
17 use moneys approved by the county governing body from the  
18 county general fund or moneys resulting from the  
19 incurrence of debt approved by the county governing body  
20 for the purchase of agricultural conservation easements.  
21 A county may not incur a greater debt than the lesser of  
22 \$100,000 or an amount equal to 20% of the total aggregate  
23 moneys appropriated from the county general fund for  
24 purchase of agricultural conservation easements.

25 (v) To maintain a repository of records of land on  
26 which agricultural conservation easements have been  
27 purchased.

28 (vi) To exercise other discretionary powers which  
29 are delegated by the county governing body or which are  
30 necessary and appropriate to further the countywide

1       program for purchasing agricultural conservation  
2       easements.

3       (3) If a county wishes to use State funds for purchasing  
4       agricultural conservation easements, the countywide program  
5       for such purchases shall be certified by the board and must  
6       continually maintain qualification for certification by  
7       meeting the following criteria:

8               (i) Agricultural conservation easements shall only  
9               be purchased in perpetuity or for a term of not less than  
10              25 years.

11              (ii) A county shall not sell, convey, extinguish,  
12              lease, encumber or perform any other act which may  
13              restrict or lessen the rights acquired by the county  
14              resulting from a purchase of an agricultural conservation  
15              easement for a period of at least 25 years from the date  
16              of easement purchase. Thereafter, a county may only do so  
17              upon approval by the board, after offering convincing  
18              evidence to the board that the land subject to the  
19              easement is no longer viable for agricultural production.

20              (iii) The price paid for purchase of a perpetual  
21              easement shall not be greater than the current fair  
22              market value of the easement as determined by appraisal  
23              in accordance with the standards and procedures adopted  
24              by the board.

25              (iv) The price paid for purchase of an easement for  
26              a term of years shall not be greater than one-tenth of  
27              the fair market value of a perpetual easement purchase.

28              (v) The content of instruments to be executed  
29              pursuant to county purchases of easements shall be  
30              approved by the board in consultation with the Attorney

1       General.

2               (vi) In determining priorities for the purchase of  
3       agricultural conservation easements from landowners, the  
4       county board shall use objective standards and fair  
5       procedures, which shall include, but not be limited to,  
6       the following:

7               (A) Consideration of the quality of the farm  
8       lands, including soil classifications and  
9       productivity.

10              (B) Consideration of the likelihood that, unless  
11       an agricultural conservation easement is purchased,  
12       the farm lands would be converted to nonagricultural  
13       use. Farm lands most likely to be converted will tend  
14       to have priority over farm lands that are less likely  
15       to be converted. For purposes of considering the  
16       likelihood of conversion, the existence of a zoning  
17       classification of the land shall not be relevant, but  
18       the market for nonfarm use or development of farm  
19       lands shall be relevant.

20              (C) The economic circumstances of individual  
21       farm-land owners, but only if the landowner has made  
22       an application for an emergency purchase of an  
23       agricultural conservation easement under this  
24       section. In other cases, economic and other  
25       circumstances of the landowner shall not be  
26       considered.

27              (vii) The county board shall set aside a minimum of  
28       5% and a maximum of 10% of the total moneys received from  
29       State and county sources during each funding cycle  
30       provided in subsection (d) of this section. Such funds

1        set aside shall be utilized for emergency purchases of  
2        agricultural conservation easements. Where the amount set  
3        aside for emergency purchases during a funding cycle  
4        exceeds the amount expended for such purchases, the  
5        county board may utilize such excess in the next funding  
6        cycle for nonemergency, as well as emergency,  
7        agricultural easement purchases. In determining whether  
8        an easement purchase is an emergency purchase and  
9        determining priorities for emergency purchases, the  
10       county board shall conform to the following:

11            (A) Emergency applications or offers to sell  
12            agricultural conservation easements may be accepted  
13            by the county only if the land is owned by an estate  
14            under settlement; if the landowner or other farm  
15            operator has become incapacitated so that he is  
16            unable to continue an active role in managing the  
17            operation; if the landowner has entered into a  
18            contract for the sale of the land to a private,  
19            nonprofit land conservation organization whose  
20            purpose is to keep farm lands in agricultural use; or  
21            if the landowner can demonstrate serious financial  
22            hardship that is likely to cause the farming  
23            operation on the land to cease.

24            (B) Consideration of emergency applications or  
25            offers by the county board shall be accomplished as  
26            soon as possible after an application or offer is  
27            received, so that emergency purchases of easements  
28            may be expedited and need not await consideration of  
29            other applications and offers.

30        (4) ANY COUNTY PROGRAM FOR THE PURCHASE OF AGRICULTURAL

<—

1 CONSERVATION EASEMENTS OR THEIR FUNCTIONAL EQUIVALENT, WHICH  
2 WAS AUTHORIZED BY THE COUNTY GOVERNING BODY AND HAS RESULTED  
3 IN THE ACTUAL PURCHASE OF SUCH EASEMENTS PRIOR TO THE  
4 EFFECTIVE DATE OF THIS ACT, SHALL BE CERTIFIED BY THE BOARD  
5 UNDER SUBSECTION (A)(2)(II), PROVIDED THAT IT SATISFIES THE  
6 CRITERIA OF SUBSECTION (B)(3). IN ADDITION TO THE POWERS  
7 ENUMERATED IN SUBSECTION (B)(2), SUCH COUNTIES SHALL HAVE THE  
8 AUTHORITY TO USE STATE FUNDS TO PURCHASE AGRICULTURAL  
9 CONSERVATION EASEMENTS ON AGRICULTURAL LANDS DESIGNATED FOR  
10 OPEN SPACE USE UNDER SECTION 3 OF THE ACT OF JANUARY 19, 1968  
11 (1967 P.L.992, NO.442), ENTITLED "AN ACT AUTHORIZING THE  
12 COMMONWEALTH OF PENNSYLVANIA AND THE COUNTIES THEREOF TO  
13 PRESERVE, ACQUIRE OR HOLD LAND FOR OPEN SPACE USES," PRIOR TO  
14 THE EFFECTIVE DATE OF THIS ACT, IF SUCH AGRICULTURAL LANDS  
15 SATISFY THE CRITERIA OF SECTION 7(C) OF THIS ACT.

16 (c) Payment of easement purchases.--The agreed-upon purchase  
17 price for agricultural conservation easements may be paid by a  
18 lump sum of cash, installments over a period of years, or by any  
19 other lawful method of payment. However, the county board shall  
20 prescribe the method or methods of payment prior to  
21 certification by the board. Where payment is to be made in  
22 installments or another deferred method, the person selling the  
23 easement may receive, in addition to the selling price, interest  
24 or other compensation relating to the deferral of payment at an  
25 amount or rate agreed to. Final payment shall not be later than  
26 five years from the date the easement purchase agreement was  
27 executed.

28 (d) Distribution of State funds.--The board shall adopt  
29 rules and regulations for the distribution of State funds that  
30 are appropriated by the General Assembly for the Statewide

purchase of agricultural conservation easements, in accordance with the following criteria:

(1) The total amount of State funds made available for the fiscal year shall be divided in half by the board, with 50% being disbursed to counties for use during an initial funding cycle of six months, and 50% being disbursed to counties for use during a subsequent funding cycle of six months. Disbursements shall only be made to counties whose programs for purchasing agricultural easements have been certified by the board. Amounts not expended by the counties during the initial funding cycle of the State fiscal year may be retained by the counties for expenditure during the subsequent funding cycle. However, with the exception of moneys set aside for emergency purchase of agricultural easements as provided in subsection (b), any annual funds not expended by the counties at the end of the State fiscal year in which they were made available shall be returned to the board. The board shall deposit them in an account for disbursement during the subsequent State fiscal year as part of the total amount of funds available.

(2) In each semiannual funding cycle, the board shall disburse the funds to counties in accordance with the following formula:

(i) Fifty percent of the funds available during the funding cycle shall be distributed among all counties, except counties of the first class, in proportion to the percentage that the total annual realty transfer tax revenues collected in a county during the preceding State fiscal year bear to the total annual realty transfer tax revenues collected Statewide, with the exception of

1 revenues of counties of the first class, during the  
2 fiscal year. In calculating the percentage of each  
3 county's annual realty transfer tax revenue, the amount  
4 of the revenue collected in a county in excess of the  
5 average amount of the revenues collected in all counties,  
6 except in counties of the first class, shall not be  
7 considered. There shall be no requirement that the  
8 counties contribute county or other local funds toward  
9 part of the purchase price of the easements.

10 (ii) Fifty percent of the funds available during the  
11 funding cycle shall be distributed only among those  
12 counties that have certified to the board an amount of  
13 county or local funds that have been made available for  
14 matching the State purchase funds made available under  
15 this subsection. Counties whose annual agricultural  
16 production, measured by the dollar volume of sales of  
17 agricultural products in the county according to the  
18 latest Census of Agriculture, equals or exceeds 2% of the  
19 total annual agricultural production in this Commonwealth  
20 during the same year shall be required to make available  
21 \$1 for every \$8 the Commonwealth contributes under this  
22 subsection for the purpose of easement purchases. Other  
23 counties eligible under this section shall be required to  
24 make available \$1 for every \$4 the Commonwealth  
25 contributes. The State funds available under this  
26 subsection shall be distributed among eligible counties  
27 in amounts equal to the funds made available by each  
28 county, multiplied by eight or four, as appropriate. If  
29 the total State funds available under this subsection  
30 during the funding cycle are not sufficient to match the



1        total available county funds during that cycle, then the  
2        State funds shall be distributed pro rata among eligible  
3        counties in proportion to the percentage that the funds  
4        made available by each county, multiplied by eight or  
5        four, as appropriate, bears to the total that all  
6        eligible counties would be entitled to by applying this  
7        formula.

8        Section 2. The act is amended by adding a section to read:

9        Section 14.1. Agricultural Conservation Easement Purchase Fund.

10       There is hereby created a restricted account known as the  
11       Agricultural Conservation Easement Purchase Fund, which shall be  
12       funded in accordance with the provisions of section 1106-C of  
13       the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform  
14       Code of 1971. The moneys appropriated in this restricted account  
15       shall be utilized in accordance with the expenditures and  
16       distribution authorized, required or otherwise provided in the  
17       program for purchase of agricultural conservation easements  
18       contained in section 14.

19       Section 3. The sum of \$50,000,000 is hereby appropriated to  
20       the Agricultural Conservation Easement Purchase Fund to carry  
21       out the purposes of this act. This shall be a continuing  
22       appropriation.

23       Section 4. This act shall take effect in 60 days.