

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 101 Session of 2001

INTRODUCED BY S. MILLER, ARGALL, ARMSTRONG, BARD, BASTIAN, BUNT, CALTAGIRONE, CLYMER, COY, DeWEESE, FEESE, GEIST, GEORGE, GRUCELA, HENNESSEY, HERSHEY, HESS, JOSEPHS, KREBS, LEH, MAJOR, MARSICO, R. MILLER, NICKOL, PETRARCA, SCHRODER, SHANER, B. SMITH, SOLOBAY, STABACK, STERN, E. Z. TAYLOR, VANCE, WANSACZ, C. WILLIAMS, WILT, ZUG, EACHUS, FREEMAN, SEMMEL, YOUNGBLOOD, STEELMAN, HORSEY, SAYLOR AND McCALL, JANUARY 23, 2001

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, FEBRUARY 7, 2001

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 defining "agricultural conservation easement" AND
4 "AGRICULTURAL PRODUCTION"; defining "parcel"; and further
5 providing for purchase of agricultural conservation
6 easements.

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7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The ~~definition~~ DEFINITIONS of "agricultural
10 conservation easement" AND "AGRICULTURAL PRODUCTION" in section
11 3 of the act of June 30, 1981 (P.L.128, No.43), known as the
12 Agricultural Area Security Law, amended November 23, 1994
13 (P.L.621, No.96), ~~is~~ ARE amended and the section is amended by
14 adding a definition to read:

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15 Section 3. Definitions.

16 The following words and phrases when used in this act shall

1 have the meanings given to them in this section, unless the
2 context clearly indicates otherwise:

3 * * *

4 "Agricultural conservation easement." An interest in land,
5 less than fee simple, which interest represents the right to
6 prevent the development or improvement of [the land] a parcel
7 for any purpose other than agricultural production. The easement
8 may be granted by the owner of the fee simple to any third party
9 or to the Commonwealth, to a county governing body or to a unit
10 of local government. It shall be granted in perpetuity as the
11 equivalent of covenants running with the land. The exercise or
12 failure to exercise any right granted by the easement shall not
13 be deemed to be management or control of activities at the site
14 for purposes of enforcement of the act of October 18, 1988
15 (P.L.756, No.108), known as the "Hazardous Sites Cleanup Act."

16 "AGRICULTURAL PRODUCTION." THE PRODUCTION FOR COMMERCIAL
17 PURPOSES OF CROPS, LIVESTOCK AND LIVESTOCK PRODUCTS, INCLUDING
18 THE PROCESSING OR RETAIL MARKETING OF SUCH CROPS, LIVESTOCK OR
19 LIVESTOCK PRODUCTS IF MORE THAN 50% OF SUCH PROCESSED OR
20 MERCHANDISED PRODUCTS ARE PRODUCED BY THE FARM OPERATOR. THE
21 TERM INCLUDES USE OF LAND WHICH IS DEVOTED TO AND MEETS THE
22 REQUIREMENTS OF AND QUALIFICATIONS FOR PAYMENTS OR OTHER
23 COMPENSATION PURSUANT TO A SOIL CONSERVATION PROGRAM UNDER AN
24 AGREEMENT WITH AN AGENCY OF THE FEDERAL GOVERNMENT.

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25 * * *

26 "Parcel." A tract of land in its entirety which is assessed
27 for tax purposes by one county, including any portion of that
28 tract that may be located in a neighboring county. The county
29 responsible for assessing an entire tract, on its own or in
30 conjunction with either the Commonwealth or a local government

1 unit, or both, shall be eligible to purchase agricultural
2 conservation easements covering the entire tract.

3 * * *

4 Section 2. Section 14.1(b) introductory paragraph and (2),
5 (b.1)(4), (d)(1), (e)(1) and (g) of the act, amended or added
6 November 23, 1994 (P.L.621, No.96), November 23, 1994 (P.L.648,
7 No.100) and December 21, 1998 (P.L.1056, No.138), are amended to
8 read:

9 Section 14.1. Purchase of agricultural conservation easements.

10 * * *

11 (b) County programs.--After the establishment of an
12 agricultural security area by the governing body, the county
13 governing body may authorize a program to be administered by the
14 county board for purchasing agricultural conservation easements
15 from landowners whose land is either within an agricultural
16 security area or in compliance with the criteria set forth in
17 paragraph (2)(i).

18 * * *

19 (2) It shall be the duty and responsibility of the
20 county board to exercise the following powers:

21 (i) (A) To adopt rules and regulations for the
22 administration of a [countywide] county program for
23 the purchase of agricultural conservation easements
24 [within agricultural security areas] in accordance
25 with the provisions of this act, including, but not
26 limited to, rules and regulations governing the
27 submission of applications by landowners,
28 establishing standards and procedures for the
29 appraisal of property eligible for purchase as an
30 agricultural conservation easement and establishing

1 standards and procedures for the selection or
2 purchase of agricultural conservation easements.

3 (B) To include in such rules and regulations,
4 standards and procedures for the selection or
5 purchase of agricultural conservation easements, by
6 the county solely or jointly with either the
7 Commonwealth or a local government unit, or both, on
8 that portion of a parcel which is not within an
9 agricultural security area if all of the following
10 criteria are complied with:

11 (I) The land is part of a parcel of farm
12 land which is bisected by the dividing line
13 between two local government units.

14 (II) The majority of the farm's viable
15 agricultural land is located within an existing
16 agricultural security area. Upon purchase of an
17 easement covering the portion of the parcel which
18 is not located within an agricultural security
19 area, that portion of the parcel shall
20 immediately become part of the previously
21 established agricultural security area which
22 contains a majority of the farm's viable
23 agricultural land. The governing body which
24 created the agricultural security area which
25 contains a majority of the farm's viable
26 agricultural land shall be responsible for the
27 recording, filing and notification outlined in
28 section 8(d) and (g) concerning land added to the
29 agricultural security area pursuant to this
30 clause.

1 (C) To include in such rules and regulations,
2 standards and procedures for the selection or
3 purchase of agricultural conservation easements, by
4 the county solely or jointly with either the
5 Commonwealth or a local government unit, or both, on
6 that portion of a parcel located in an adjoining
7 county if all of the following criteria are complied
8 with:

9 (I) The land is part of a parcel of farm
10 land which is bisected by the dividing line
11 between the purchasing county and the adjoining
12 county.

13 (II) Either a mansion house is located on
14 that portion of the parcel which is within the
15 purchasing county or the dividing line between
16 the counties bisects the mansion house and the
17 owner of the parcel has chosen the purchasing
18 county as the situs of assessment for tax
19 purposes, or, if there is no mansion house on the
20 parcel, the majority of the farm's viable
21 agricultural land is located in the purchasing
22 county.

23 (III) The portion of the parcel located in
24 the purchasing county is within an agricultural
25 security area. Upon purchase of an easement by
26 the purchasing county covering that portion of
27 the parcel located in the adjoining county, the
28 portion of the parcel located in the adjoining
29 county shall immediately become part of the
30 agricultural security area previously established

1 in the purchasing county. The governing body
2 which created the agricultural security area in
3 the purchasing county shall be responsible for
4 the recording, filing and notification outlined
5 in section 8(d) and (g) concerning land added to
6 the agricultural security area pursuant to this
7 clause.

8 (ii) To adopt rules of procedure and bylaws
9 governing the operation of the county board and the
10 conduct of its meetings.

11 (iii) To execute agreements to purchase agricultural
12 conservation easements in the name of the county.

13 (iv) To purchase in the name of the county
14 agricultural conservation easements either within
15 agricultural security areas or pursuant to the criteria
16 set forth in subparagraph (i).

17 (v) To use moneys appropriated by the county
18 governing body from the county general fund to hire staff
19 and administer the [countywide] county program.

20 (vi) To use moneys appropriated by the county
21 governing body from the county general fund or the
22 proceeds of indebtedness incurred by the county and
23 approved by the county governing body for the purchase of
24 agricultural conservation easements either within
25 agricultural security areas or pursuant to the criteria
26 set forth in subparagraph (i).

27 (vii) To establish and maintain a repository of
28 records of farm lands which are subject to agricultural
29 conservation easements purchased by the county [and which
30 are located within the county].

1 (viii) To record agricultural conservation easements
2 purchased by the county in the office of the recorder of
3 deeds of the county wherein the agricultural conservation
4 easements are located and to submit to the State board a
5 certified copy of agricultural conservation easements
6 within 30 days after recording. The county board shall
7 attach to all certified copies of the agricultural
8 conservation easements submitted to the State board a
9 description of the farm land subject to the agricultural
10 conservation easements.

11 (ix) To submit to the State board for review the
12 initial county program and any proposed revisions to
13 approved county programs for purchasing agricultural
14 conservation easements.

15 (x) To recommend to the State board for purchase by
16 the Commonwealth agricultural conservation easements
17 within agricultural security areas located within the
18 county.

19 (xi) To recommend to the State board the purchase of
20 agricultural conservation easements by the Commonwealth
21 and the county jointly.

22 (xii) To purchase agricultural conservation
23 easements jointly with the Commonwealth.

24 (xiii) To exercise other powers which are necessary
25 and appropriate for the exercise and performance of its
26 duties, powers and responsibilities under this act.

27 (xiv) To submit to the State board applications for
28 agricultural conservation easements in accordance with
29 the guidebook authorized under subsection (a)(3)(xv).

30 (xv) To exercise primary enforcement authority with

1 respect to the following:

2 (A) Agricultural conservation easements within
3 the county.

4 (B) Agricultural conservation easements acquired
5 pursuant to the criteria set forth in subparagraph
6 (i), including any portion of such an agricultural
7 conservation easement extending into an adjoining
8 county.

9 * * *

10 (b.1) Local government unit participation.--Any local
11 government unit that has created an agricultural security area
12 may participate along with an eligible county and the
13 Commonwealth in the preservation of farmland through the
14 purchase of agricultural conservation easements.

15 * * *

16 (4) The local government unit may purchase an
17 agricultural conservation easement, provided that all of the
18 following apply:

19 (i) The agricultural conservation easement is
20 located within an agricultural security area of at least
21 500 acres or the easement purchase is a joint purchase
22 with either a county or both a county and the
23 Commonwealth pursuant to the criteria set forth in
24 subsection (b)(2)(i).

25 (ii) The deed of agricultural conservation easement
26 is at least as restrictive as the deed of agricultural
27 conservation easement prescribed by the State board for
28 agricultural conservation easements purchased by the
29 Commonwealth.

30 (iii) The local government unit shall participate

1 with the county board in complying with paragraph (5) for
2 recording any agricultural conservation easement
3 purchased by the local government unit.

4 * * *

5 (d) Program approval.--

6 (1) The standards, criteria and requirements established
7 by the State board for State board approval of county
8 programs for purchasing agricultural conservation easements
9 shall include, but not be limited to, the extent to which the
10 county programs consider and address the following:

11 (i) The quality of the farmlands subject to the
12 proposed easements, including soil classification and
13 soil productivity ratings. Farmland considered should
14 include soils which do not have the highest soil
15 classifications and soil productivity ratings but which
16 are conducive to producing crops unique to the area.

17 (ii) The likelihood that the farmlands would be
18 converted to nonagricultural use unless subject to an
19 agricultural conservation easement. Areas in the county
20 devoted primarily to agricultural use where development
21 is occurring or is likely to occur in the next 20 years
22 should be identified. For purposes of considering the
23 likelihood of conversion, the existence of a zoning
24 classification of the land shall not be relevant, but the
25 market for nonfarm use or development of farmlands shall
26 be relevant.

27 (ii.1) Proximity of the farmlands subject to
28 proposed easements to other agricultural [lands] parcels
29 in the county which are subject to agricultural
30 conservation easements.

1 (iii) The stewardship of the land and use of
2 conservation practices and best land management
3 practices, including, but not limited to, soil erosion
4 and sedimentation control and nutrient management.

5 (iv) Fair, equitable, objective and
6 nondiscriminatory procedures for determining purchase
7 priorities.

8 * * *

9 (e) Easement purchase.--

10 (1) The State board may reject the recommendation made
11 by a county for purchase of an agricultural conservation
12 easement whenever:

13 (i) The recommendation does not comply with a county
14 program certified and approved by the State board for
15 purchasing agricultural conservation easements.

16 (ii) Clear title cannot be conveyed.

17 (iii) The farmland which would be subject to the
18 agricultural conservation easement is either not located
19 within a duly established agricultural security area of
20 500 or more acres established or recognized under this
21 act or not in compliance with the criteria set forth in
22 subsection (b)(2)(i).

23 (iv) The allocation of a county established pursuant
24 to subsection (h) is exhausted or is insufficient to pay
25 the purchase price.

26 (v) Compensation is not provided to owners of
27 surface-mineable coal disturbed or affected by the
28 creation of such easement.

29 * * *

30 (g) Purchase price.--The price paid for purchase of an

1 agricultural conservation easement in perpetuity shall not
2 exceed the difference between the nonagricultural value and the
3 agricultural value determined pursuant to subsection (f) at the
4 time of purchase, unless the difference is less than the State
5 or county boards' original appraised value in which case the
6 State or county boards' original easement value may be offered.
7 [However, under no circumstances shall the price paid for
8 purchase of an agricultural conservation easement in perpetuity
9 exceed \$10,000 per acre of State funds.] The purchase price may
10 be paid in a lump sum, in installments over a period of years,
11 or in any other lawful manner of payment. If payment is to be
12 made in installments or another deferred method, the person
13 selling the easement may receive, in addition to the selling
14 price, interest in an amount or at a rate set forth in the
15 agreement of purchase, and final payment of all State money
16 shall be made within, and no later than, five years from the
17 date the agricultural conservation easement purchase agreement
18 was fully executed. The county may provide for payments on an
19 installment or other deferred basis and for interest payments by
20 investing its allocation of State money for purchases approved
21 by the State board under subsection (h)(11) in securities
22 deposited into an irrevocable escrow account or in another
23 manner provided by law.

24 * * *

25 Section 3. Notwithstanding any provisions of law to the
26 contrary, any agricultural conservation easement purchased
27 solely by a county prior to the effective date of this section,
28 which easement covered that portion of a farm parcel bisected by
29 a county border located within the purchasing county, shall be
30 considered eligible for repurchase by the Commonwealth or by the

1 Commonwealth in conjunction with county or local programs. The
2 value of such an easement, for the purposes of repurchase by the
3 Commonwealth or repurchase by the combined moneys of the
4 Commonwealth and a county or municipality, or both, shall be
5 calculated as the sum of the original easement purchase price
6 plus both administrative costs incurred by the county to
7 purchase the original easement and administrative costs incurred
8 by the county and associated with the repurchase. Any moneys
9 contributed by the Commonwealth for repurchase of such an
10 easement shall be paid to the county as the current easement
11 holder and applied to the purchase of other agricultural
12 conservation easements.

13 Section 4. Within 90 days of the effective date of this
14 section, the Department of Agriculture shall propose regulations
15 implementing the provisions of this act.

16 Section 5. This act shall take effect in 30 days.