



HOUSE COMMITTEE ON APPROPRIATIONS
2009-10 Legislative Session

FISCAL NOTE

HOUSE BILL: 117

PRINTER'S NO: 113

PRIME SPONSOR: Harper

FISCAL IMPACT SUMMARY	FY 2009/10	FY 2010/11
Expenditure Increase/(Decrease):		
Motor License Fund	\$0	\$0
Other Commonwealth Funds	\$0	\$0
Revenue Increase/(Decrease):		
Motor License Fund	See analysis	See analysis
Other Commonwealth Funds	See analysis	See analysis

OVERVIEW:

House Bill 117 repeals §2003(e)(7) of the Administrative Code (1929, P.L. 177, No. 175), which specifies the procedure by which the Department of Transportation (PennDOT) may sell land acquired by it that is no longer needed, and it creates a new freestanding act to effectuate the same with three major differences.

First, current law requires PennDOT to offer the land for its fair market value initially to other public agencies, defined to include authorities and political subdivisions, except for Second Class A counties not governed under a home rule charter. This exception applies only to Bucks and Montgomery counties. The bill removes this exception, enabling Bucks and Montgomery counties to be given the first opportunity to purchase land from PennDOT for a public purpose.

Second, after offering the land for a public purpose, current law requires PennDOT to offer unimproved land to the person from whom it was acquired at the acquisition price, less costs, expenses and reasonable attorney fees incurred by the person as a result of the acquisition of the land by the department *if* the person still retains title to land abutting the land to be sold. If not, then the land must be offered at fair market value to the person who holds title to the land abutting the land to be sold. This bill changes the condition by which PennDOT may offer the land to the person from whom it originally acquired the land. Under the bill, if that person had sold abutting land to another person, then PennDOT must offer the land at fair market value to the owner of the abutting land. If not, then PennDOT must offer the land to the person from whom it acquired the land at the original acquisition price, less costs, expenses, and reasonable attorney fees. This bill, therefore, expands the times when it must offer the land to the person from whom the land was acquired to include the times it had acquired an entire parcel of land in question. Under current law, this provision only applies to partial takings when PennDOT acquired only some but not all the land in question.

Third, current law specifies that revenue from land sold that was originally acquired with Motor License Funds shall be deposited in the Motor License Fund. This bill requires *all* revenue to be deposited in the Motor License Fund regardless which other fund may have been used for its acquisition. According to PennDOT, when federal funds are used to acquire land, and the land or portions of the land are no longer needed, the Federal Highway Administration allows

PennDOT to retain the proceeds as long as it is used for transportation purposes pursuant to U.S. Code 23.

The bill also stipulates that “public purpose” shall include the preservation of open space. According to PennDOT, the department already interprets current law as allowing for preservation of open space despite the fact that current law does not specifically state it as such. By being more explicit, however, this change may underscore the importance of preserving open space, which may impact the emphasis PennDOT will give open space preservation when seeking to dispose surplus land.

For the past five fiscal years, i.e., FY 2004/05 through FY 2008/09, PennDOT had sold 209 acres of land in 65 transactions bringing in a total \$3,180,000 to the Motor License Fund. The annual averages are 13 transactions, \$636,000, and 41.8 acres.

The Department of Transportation was created by Act 120 of 1970, which amended the Administrative Code, charging the department to develop and maintain comprehensive and efficient transportation systems. In addition to highways and bridges, its responsibilities include public transportation, rail, aviation, ports, and waterways. Among its power enumerated in Article XX of the Administrative Code, PennDOT has the power of eminent domain. The latest Governor’s Executive Budget Book estimated total expenditures for the department for FY 2008/09 to be \$6.4 billion, including \$1.5 billion in federal funds.

The effective date is sixty days.

ANALYSIS:

Removing the exceptions for Bucks and Montgomery counties may possibly, in limited circumstances, increase revenue to the Commonwealth because of the potential difference in price. Land offered to public agencies is priced at fair market value but land offered to persons from whom the land was originally acquired is offered at the usually lower price of the original acquisition price less costs, expenses, and reasonable attorney fees. Therefore, for those limited circumstances when Bucks or Montgomery County may be interested in some surplus land from PennDOT, this bill may have the impact of increased revenue. The amount of the increase will depend on the number and specifics of any such transactions, which is not possible to quantify, but in all likelihood it would not be significant.

The second change explained previously—when PennDOT must offer land to the original person from which it was acquired for complete takings as opposed to just partial takings—may have the effect of reducing revenue for the opposite reason as stated above. In these circumstances, the acquisition price, less costs, expenses, and reasonable attorney fees, is likely to be less than the fair market value. In not all cases will the person want to buy back the land. The amount of the decrease, like above, will depend on the number and specifics of any such transactions, which is not possible to quantify. Because on average the total annual revenue from real estate sales is \$636,000, it is safe to say that the amount of any loss from this second change would be significantly less than \$636,000.

The bill requires all funds received from the sale of surplus land to be deposited in the Motor License Fund. According to PennDOT, most land it acquires and sells is due to highway or road projects. For the uncommon situation when PennDOT will sell land that was originally purchased with General Fund or other money, then the Motor License Fund would gain from the other fund's loss. This will have an overall net effect to Commonwealth funds of zero.

The bill explicitly states that the preservation of open space is a public purpose. Because this explicit language does not change current practice, this change has no fiscal impact.

This bill does not adversely impact administrative costs for PennDOT. The acquisition and selling of land are ongoing functions of the Department.

The following sources were consulted in the preparation of this fiscal note: the Department of Transportation and the Department of Revenue.

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House Appropriations Committee, (D)

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General Note and Disclaimer: *This Fiscal Note was prepared pursuant to House Rule 19(a), and the elements considered and reported above are required by Section 5 of the rule. Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*