

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1793

Session of
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AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 7, 1980

AN ACT

1 Authorizing the creation of agricultural areas.

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1 IN AGRICULTURAL AREAS.

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3 Section ~~14~~ 16. Effective date.

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4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the "Agricultural
8 Area Security Law."

9 Section 2. Statement of legislative findings.

10 It is the declared policy of the Commonwealth to conserve and
11 protect and to encourage the development and improvement of its
12 agricultural lands for the production of food and other
13 agricultural products. It is also the declared policy of the
14 Commonwealth to conserve and protect agricultural lands as
15 valued natural and ecological resources which provide needed
16 open spaces for clean air sheds, as well as for aesthetic
17 purposes. Article VIII, section 2 of the Constitution of
18 Pennsylvania provides that the General Assembly may, by law,
19 establish standards and qualifications for agricultural
20 reserves. Agriculture in many parts of the Commonwealth is under
21 urban pressure from expanding metropolitan areas. This urban
22 pressure takes the form of scattered development in wide belts
23 around urban areas, and brings conflicting land uses into
24 juxtaposition, creates high costs for public services, and
25 stimulates land speculation. When this scattered development
26 extends into good farm areas, ordinances inhibiting farming tend
27 to follow, farm taxes rise, and hopes for speculative gains
28 discourage investments in farm improvements. Many of the
29 agricultural lands in the Commonwealth are in jeopardy of being
30 lost for any agricultural purposes. Certain of these lands

1 constitute unique and irreplaceable land resources of Statewide
2 importance. It is the purpose of this act to provide a means by
3 which agricultural land may be protected and enhanced as a
4 viable segment of the Commonwealth's economy and as an economic
5 and environmental resource of major importance.

6 Section 3. Definitions.

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

10 "Advisory committee." An Agricultural Area Advisory
11 Committee.

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

15 "Agricultural production." The production for commercial
16 purposes of crops, livestock and livestock products, but not
17 land or portions thereof used for processing or retail
18 merchandising of such crops, livestock or livestock products.

19 "COUNTY GOVERNING BODY." THE COUNTY BOARD OF COMMISSIONERS
20 OR OTHER DESIGNATED COUNCIL OF REPRESENTATIVES UNDER HOME RULE
21 CHARTERS. <—

22 "Crops, livestock and livestock products." Include but are
23 not limited to:

24 (1) Field crops, including corn, wheat, oats, rye,
25 barley, hay, potatoes, dry beans.

26 (2) Fruits, including apples, peaches, grapes, cherries,
27 berries.

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

30 (4) Horticultural specialties, including nursery stock

1 ornamental shrubs, ornamental trees and flowers.

2 (5) Livestock and livestock products, including cattle,
3 sheep, hogs, goats, horses, poultry, furbearing animals,
4 milk, eggs and furs.

5 (6) TIMBER, WOOD AND OTHER WOOD PRODUCTS DERIVED FROM
6 TREES. <—

7 "DEVELOPMENT EASEMENT." AN INTEREST IN LAND, LESS THAN FEE
8 SIMPLE TITLE, WHICH INTEREST REPRESENTS THE RIGHT TO DEVELOP
9 SUCH LANDS FOR RESIDENTIAL, COMMERCIAL, RECREATIONAL OR
10 INDUSTRIAL USES.

11 "Governing body." The governing body of a local government
12 unit.

13 "Local government unit." Any city, borough, township or
14 town.

15 "Planning commission." A local government planning
16 commission.

17 "Viable agricultural land." Land suitable for agricultural
18 production and which will continue to be economically feasible
19 for such use if real estate taxes, farm use restrictions, and
20 speculative activities are limited to levels approximating those
21 in commercial agricultural areas not influenced by the proximity
22 of urban and related nonagricultural development.

23 Section 4. Agricultural Area Advisory Committee.

24 The governing body of any local government may establish an
25 Agricultural Area Advisory Committee which shall consist of four
26 active farmers and four agribusinessmen residing within the unit
27 of local government and one member of the governing body of such
28 local government, who shall serve as the chairman of the
29 committee. Such a committee shall be established when a petition
30 is received by the governing body for the creation of an

1 agricultural area. Pursuant to this act the members of such
2 committee shall be appointed by and shall serve at the pleasure
3 of the chairman of the governing body. The members shall serve
4 without salary, but the governing body may entitle each such
5 member to reimbursement for his actual and necessary expenses
6 incurred in the performance of his official duties. Such
7 committee shall advise the governing body and work with the
8 planning commission in relation to the proposed establishment,
9 modification, and termination of agricultural areas. In
10 particular, the committee shall render expert advice relating to
11 the desirability of such action, including advice as to the
12 nature of farming and farm resources within the proposed area
13 and the relation of farming in such area to the local government
14 unit as a whole.

15 Section 5. Agricultural areas.

16 (a) Proposals for creation.--Any owner or owners of land may
17 submit a proposal to the governing body for the creation of an
18 agricultural area within such local government unit, provided
19 that such owner or owners own at least 500 acres or at least 10%
20 of the land proposed to be included in the area, whichever is
21 greater. The proposed area may also consist of two or more
22 noncontiguous parcels or areas. Such proposal shall be submitted
23 in such manner and form as may be prescribed by the governing
24 body of the local government unit wherein the proposed area is
25 situated and shall include a description of the proposed area,
26 including the boundaries thereof. If the proposed area is
27 situated in more than one local government unit, the proposal
28 shall be submitted to the governing bodies of all local
29 government units affected.

30 (b) Notice.--Upon the receipt of such a proposal, the

governing body shall thereupon provide notice of such proposal by publishing a notice in a newspaper having general circulation within the proposed area and by posting such notice in five conspicuous places within, adjacent or near to the proposed area. The notice shall contain the following information:

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

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

(3) A statement that any municipality whose territory encompasses the proposed area, or any landowner who owns at least 10% of the land proposed to be included within the proposed area, or any landowner with lands adjacent or near to the proposed area who wishes such lands to be included therein, may propose modifications of the proposed area in such form and manner as may be prescribed by the governing body.

(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) A statement that at the termination of the 30-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 within 30

1 days after the publication of such notice.

2 (d) Report by planning commission.--The governing body
3 shall, upon the termination of such 30-day period, refer such
4 proposal and proposed modifications to the planning commission,
5 which shall, within 45 days, report to the governing body the
6 potential effect of such proposal and proposed modifications
7 upon the local government's planning policies and objectives.

8 (e) Referral to advisory committee.--The governing body
9 shall also, upon the termination of such 30-day period, refer
10 such proposal and proposed modifications to the Agricultural
11 Area Advisory Committee, which shall, within 45 days report to
12 the governing body its recommendations concerning the proposal
13 and proposed modifications.

14 Section 6. Public hearings.

15 (a) Hearings.--The governing body, shall upon receipt of the
16 reports from the advisory committee and the planning commission,
17 hold a public hearing relative to the proposed agricultural
18 area.

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.

22 (c) Notice of hearing.--A hearing notice shall be published
23 in a newspaper having a general circulation within the proposed
24 area and shall be given in writing to those municipalities whose
25 territory encompasses the proposed area and any proposed
26 modifications, and by posting such notice in five conspicuous
27 places within, adjacent or near to the proposed area. Such
28 notice shall contain the following information:

29 (1) A statement of the time, date and place of the
30 public hearing.

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

4 (3) A statement that the public hearing will be held
5 concerning:

6 (i) The original proposal.

7 (ii) Any written amendments proposed during the 30-
8 day review period.

9 (iii) Any recommendations proposed by the
10 Agricultural Area Advisory Committee and the planning
11 commission.

12 Section 7. Evaluation criteria.

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

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

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

21 (3) The nature and extent of land uses other than active
22 farming within the proposed area and near or adjacent
23 thereto.

24 (4) Local government unit developmental patterns and
25 needs.

26 (5) The county's comprehensive plan.

27 (6) Any other matter which may be relevant.

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

30 (1) Soil.

- 1 (2) Climate.
- 2 (3) Topography.
- 3 (4) Markets for farm products.
- 4 (5) The extent and nature of farm improvements.
- 5 (6) The present status of farming.
- 6 (7) Anticipated trends in agricultural economic
- 7 conditions and technology.
- 8 (8) Any other natural or economic factors as may be
- 9 relevant.

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

- 13 (1) Soil surveys of the Pennsylvania State University.
- 14 (2) Soil surveys and other information provided by the
- 15 National Cooperative Soil Survey.
- 16 (3) Soil survey maps prepared by the United States Soil
- 17 Conservation Service.
- 18 (4) The United States census of agricultural categories
- 19 of land use classes.
- 20 (5) Agricultural viability maps prepared by the
- 21 Department of Agriculture.
- 22 (6) Any other relevant published data, maps, charts, or
- 23 results of soil or land use surveys made by any State or
- 24 Federal agency.

25 Section 8. Decision on proposed area.

26 (a) Action by governing body.--The governing body, after
27 receiving the reports of the planning commission and the
28 advisory committee, and after such public hearing, may adopt as
29 a plan the proposal or any modification of the proposal they
30 deem appropriate, including the inclusion, to the extent

1 feasible, of adjacent viable farm lands, and, the exclusion, to
2 the extent feasible, of nonviable farm land and nonfarm land.
3 The governing body shall act to adopt or reject the proposal, or
4 any modification of it, no later than 180 days from the date the
5 proposal was originally submitted.

6 (b) Effective date of creation of area.--The proposed area,
7 shall become effective upon the adoption of same by the
8 governing body.

9 (c) Filing of area description.--Upon the creation of an
10 agricultural area, a description thereof shall be filed by the
11 governing body with the recorder of deeds and with the planning
12 commission.

13 Section 9. Review of area.

14 The governing body shall review any area created under this
15 section eight years after the date of its creation and every
16 eight years thereafter. In conducting such review, the governing
17 body shall ask for the recommendations of the planning
18 commission, the county planning commission and the advisory
19 committee, and shall, at least 120 days prior to the end of the
20 eighth year and not more than 180 days prior to such date, hold
21 a public hearing at a place within the area or otherwise readily
22 accessible to the area upon notice in a newspaper having a
23 general circulation within the area by posting in five
24 conspicuous places within, adjacent or near the area and by
25 individual notice, in writing, to those municipalities whose
26 territories encompass the area and the person owning land within
27 the area. The governing body after receiving the reports of the
28 planning commission, the county planning commission and the
29 advisory committee and after the public hearing, may terminate
30 the area at the end of such eight-year period by filing a notice

1 of termination with the recorder of deeds and with the planning
2 commission or may modify the area in the same manner as is
3 provided in this act for the creation of areas. If the governing
4 body does not act, or if a modification of an area is rejected,
5 the area shall continue as originally constituted.

6 Section 10. Appeals.

7 Any party in interest aggrieved by a decision or action of
8 the governing body relating to the creation, composition,
9 modification, rejection or termination of an agricultural area
10 may take an appeal to the court of common pleas, in the manner
11 provided by law within 30 days after such decision or action.

12 Section 11. Limitation on local regulations.

13 No municipality or political subdivision shall exercise any
14 of its powers to enact local laws or ordinances within an
15 agricultural area in a manner which would unreasonably restrict
16 or regulate farm structures or farming practices in
17 contravention of the purposes of the act unless such
18 restrictions or regulations bear a direct relationship to the
19 public health or safety.

20 Section 12. Policy of Commonwealth agencies.

21 It shall be the policy of all Commonwealth agencies to
22 encourage the maintenance of viable farming in agricultural
23 areas and their administrative regulations and procedures shall
24 be modified to this end insofar as is consistent with the
25 promotion of public health and safety, with the provisions of
26 any Federal statutes, standards, criteria, rules, regulations,
27 or policies, and any other requirements of Federal agencies,
28 including provisions applicable only to obtaining Federal
29 grants, loans, or other funding.

30 Section 13. Limitation on exercise of eminent domain.

1 (a) Approval required for condemnation by an agency of the
2 Commonwealth.--No agency of the Commonwealth having or
3 exercising powers of eminent domain shall condemn any land
4 within any agricultural area for any purpose unless prior
5 approval has been obtained from the following committee: a
6 committee made up of six members, consisting of the Director of
7 the Office of State Planning and Development, or his designee,
8 the Secretary of Agriculture, or his designee, the Secretary of
9 Environmental Resources, or his designee, the Secretary of
10 Transportation, or his designee, and two active farmers
11 appointed by the Governor, with the advice and consent of a
12 majority of the Senate, for a term of four years. The chairman
13 of this committee shall be the Secretary of Agriculture, or his
14 designee. The condemnation approval specified by this subsection
15 shall not be required for an underground public utility facility
16 or for any public utility facility the necessity for and the
17 propriety and environmental effects of which has been reviewed
18 and ratified or approved by the Pennsylvania Public Utility
19 Commission.

20 (b) Approval required for condemnation by a political
21 subdivision, authority, public utility or other body.--No
22 political subdivision, authority, public utility or other body
23 having or exercising powers of eminent domain shall condemn any
24 land within any agricultural area for any purpose, unless prior
25 approval has been obtained from each of the following bodies:
26 the governing bodies of the municipalities encompassing the
27 agricultural area, the county commissioners, and the
28 Agricultural Area Advisory Committee. The condemnation approvals
29 specified by this subsection shall not be required for an
30 underground public utility facility or for any public utility

1 facility the necessity for and the propriety and environmental
2 effects of which has been reviewed and ratified or approved by
3 the Pennsylvania Public Utility Commission.

4 (c) Notice.--Any condemnor wishing to condemn property the
5 approval for which is required under this section shall at least
6 30 days prior to taking such action notify each of the foregoing
7 bodies that such action is contemplated, and no such
8 condemnation shall be effective until 90 days following the
9 receipt of such notice.

10 (d) Review by committee.--Upon receipt of such notice the
11 committee provided for in this section shall review the proposed
12 condemnation to determine its effect upon the preservation and
13 enhancement of agriculture and agricultural resources within the
14 area and upon Commonwealth, county and municipal environmental
15 and comprehensive plans, policies and objectives.

16 (e) Public hearings.--Within such 90-day period the
17 committee shall hold a public hearing concerning the proposed
18 condemnation at a place within or otherwise readily accessible
19 to the area. Timely notice of such hearing shall be placed in a
20 newspaper having a general circulation within the area and a
21 written notice shall be posted at five conspicuous places within
22 or adjacent to the area. Individual written notice shall also be
23 given to all municipalities encompassing all or part of the area
24 and to the proposed condemnor.

25 (f) Findings and decisions of the committee.--The committee
26 shall render its findings and decisions on or before the
27 expiration such 90-day period and likewise within such period
28 shall report the same to the proposed condemnor, the
29 municipalities affected and any party who shall file an
30 appearance at such hearing. If the committee finds that such

1 proposed condemnation might have an unreasonably adverse effect
2 upon the preservation and enhancement of agriculture or
3 municipal resources within the area or upon the environmental
4 and comprehensive plans of the county, municipality and the
5 Commonwealth or upon the goals, resources plans, policies or
6 objectives thereof, or that in any event there is a reasonable
7 or prudent alternative to such condemnation, the committee shall
8 refuse approval for such condemnation.

9 (g) Injunctions.--The committee may request the Attorney
10 General to bring an action to enjoin any such condemnor from
11 violating any of the provisions of this section.

12 (h) Emergencies excepted.--This section shall not apply to
13 any emergency project which is immediately necessary for the
14 protection of life or property.

15 SECTION 14. PURCHASE OF DEVELOPMENT EASEMENT IN AGRICULTURAL
16 AREAS. <—

17 (A) PROGRAM TO PURCHASE EASEMENTS.--AFTER THE ESTABLISHMENT
18 OF AN AGRICULTURAL AREA BY THE GOVERNING BODY, THE COUNTY
19 GOVERNING BODY MAY AUTHORIZE A PROGRAM TO PURCHASE THE
20 DEVELOPMENT EASEMENTS FOR LAND WITHIN AN AGRICULTURAL AREA. THE
21 PROGRAM SHALL BE ADMINISTERED BY THE COUNTY PLANNING COMMISSION
22 AND A FARMER MEMBER FROM EACH AGRICULTURAL AREA ADVISORY
23 COMMITTEE WITHIN THE COUNTY.

24 (B) FUNDS FOR PURCHASES.--THE COUNTY GOVERNING BODY MAY USE
25 MONEYS FROM ITS GENERAL FUND AND/OR INCUR DEBT TO MAKE AVAILABLE
26 MONEYS TO PURCHASE THE DEVELOPMENT EASEMENTS IN AGRICULTURAL
27 AREAS. THE INCURRING OF DEBT BY THE COUNTY GOVERNING BODY SHALL
28 BE CONSISTENT WITH ALL PRESENT LAWS AND PROCEDURES IMPOSED ON
29 COUNTIES FOR SUCH ACTION.

30 (C) OFFERS.--AGENTS, EMPLOYEES OR OFFICIALS OF THE COUNTY

1 PLANNING COMMISSION SHALL BE RESPONSIBLE TO MAKE SUCH OFFERS AND
2 TO ENTER INTO SUCH NEGOTIATIONS AS ARE NECESSARY WITH ANY OWNER
3 OF LANDS IN AN AGRICULTURAL AREA, IN ORDER TO PURCHASE ANY
4 DEVELOPMENT EASEMENTS. NOTHING IN THIS ACT SHALL BE CONSTRUED AS
5 TO REQUIRE ANY OWNER OF LAND IN AN AGRICULTURAL AREA TO SELL OR
6 TRANSFER ANY DEVELOPMENT EASEMENTS THERETO. AN OWNER MAY REJECT
7 ANY OFFER BY ANY OFFICIAL OF THE COUNTY PLANNING COMMISSION TO
8 PURCHASE ANY DEVELOPMENT EASEMENTS. THE PRICE FOR THE PURCHASE
9 OF DEVELOPMENT EASEMENTS SHALL BE MUTUALLY AGREED TO BY THE
10 OWNER OF THE LAND EFFECTED AND THE COUNTY GOVERNING BODY. ALL
11 SUCH CONTRACTS FOR PURCHASE SHALL BE IN WRITING.

12 (D) SALE OF LAND.--A COUNTY GOVERNING BODY MAY SELL ANY
13 DEVELOPMENT EASEMENTS IT HAS ACQUIRED UNDER THIS ACT: PROVIDED,
14 THAT THE LOCAL GOVERNING BODY, WHICH HAS JURISDICTION OVER THE
15 EFFECTED LAND, APPROVES THE SALE BY A MAJORITY VOTE OF ITS
16 MEMBERS: AND, FURTHER PROVIDED, THAT THE PRESENT OWNER OF THE
17 LAND EFFECTED HAS REFUSED TO PURCHASE SUCH DEVELOPMENT EASEMENT.
18 SECTION 15. RULES AND REGULATIONS.

19 THE SECRETARY OF THE DEPARTMENT OF AGRICULTURE SHALL
20 PROMULGATE RULES AND REGULATIONS NECESSARY TO PROMOTE THE
21 EFFICIENT, UNIFORM, STATEWIDE ADMINISTRATION OF THE ACT.

22 Section ~~14~~ 16. Effective date.

23 This act shall take effect in 60 days.

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