

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 156

Session of
1987

INTRODUCED BY WENGER, HELFRICK, STAPLETON, MADIGAN, JUBELIRER,
ARMSTRONG, SHAFFER, WILT, GREENWOOD, CORMAN, BRIGHTBILL,
ANDREZESKI, O'PAKE AND SALVATORE, JANUARY 20, 1987

SENATOR HELFRICK, AGRICULTURE AND RURAL AFFAIRS, AS AMENDED,
FEBRUARY 3, 1987

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
18 agricultural products. It is also the declared policy of the
19 Commonwealth to conserve and protect agricultural lands as
20 valued natural and ecological resources which provide needed

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

21 It is further the purpose of this act to:

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

25 (2) Protect farming operations in agricultural areas
26 from incompatible nonfarm land uses that may render farming
27 impracticable.

28 (3) Assure permanent conservation of productive
29 agricultural lands in order to protect the agricultural
30 economy of this Commonwealth.

1 (4) Provide compensation to landowners in exchange for
2 their relinquishment of the right to develop their private
3 property.

4 (5) Leverage State agricultural easement purchase funds
5 and protect the investment of taxpayers in agricultural
6 conservation easements.

7 Section 3. Definitions.

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

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

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

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

25 "Agricultural production." The production for commercial
26 purposes of crops, livestock and livestock products, but not
27 land or portions thereof used for processing or retail
28 merchandising of such crops, livestock or livestock products.

29 "Board" or "State board." The Agricultural [Lands
30 Condemnation Approval] Conservation Board.

1 "County governing body." The county board of commissioners
2 or other designated council of representatives under home rule
3 charters.

4 "Crops, livestock and livestock products." Include but are
5 not limited to:

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

8 (2) Fruits, including apples, peaches, grapes, cherries
9 and berries.

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

12 (4) Horticultural specialties, including nursery stock
13 ornamental shrubs, ornamental trees and flowers.

14 (5) Livestock and livestock products, including cattle,
15 sheep, hogs, goats, horses, poultry, furbearing animals,
16 milk, eggs and furs.

17 (6) Timber, wood and other wood products derived from
18 trees.

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

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

29 "Governing body." The governing body of a local government
30 unit.

1 "Local government unit." Any city, borough, township or
2 town.

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

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

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

26 Section 5. Agricultural areas.

27 (a) Proposals for creation.--Any owner or owners of land may
28 submit a proposal to the governing body for the creation of an
29 agricultural area within such local government unit, provided
30 that such owner or owners own at least 500 acres of viable

1 agricultural land proposed to be included in the area. The
2 proposed area may also consist of two or more noncontiguous
3 parcels or areas[: Provided, however, That the], providing that:

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

7 (2) Minimum acreage [requirement] requirements shall be
8 [more than 50] ten acres or less.

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

17 (a.2) Proposals for agricultural areas in more than one
18 local government unit.--If the land included in a proposal for
19 an agricultural area is situated in more than one local
20 government unit, the proposal shall be submitted to, and
21 approval of the proposal shall be sought from, the governing
22 body of each such local government unit affected. A rejection by
23 a governing body shall exclude that portion of the proposal
24 which is situated within the local government unit. However,
25 such rejection shall not preclude the approval of the remaining
26 portion of the proposal as an agricultural area by the governing
27 body of the other affected local government units, provided that
28 the total acreage approved is at least 500 acres and that such
29 approved portion meets all other requirements imposed under this
30 act for agricultural areas.

(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. If the governing body fails to provide the required notice within 15 days of receiving a proposal, a person who is adversely affected by this inaction may bring an action in mandamus to compel compliance. 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] local government unit encompassing or adjacent to the proposed area, or any landowner who owns 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 or not included therein, may propose modifications of the proposed area in such form and manner as may be prescribed by the governing body. The statement shall indicate that objections to the proposal and 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.

1 (5)] (4) A statement that at the termination of the 30-
2 day period, the proposal and proposed modifications will be
3 submitted to the planning commission and the advisory
4 committee, and that thereafter a public hearing will be held
5 on the proposal, proposed modifications and recommendations
6 of the planning commission and advisory committee.

7 (c) Modification proposals.--The governing body shall
8 receive any proposals for modifications of such proposal which
9 may be submitted by such landowners or [municipalities within 30
10 days after the publication of such notice] local government
11 units up to seven days prior to advertisement of public hearing
12 as provided in section 6(a).

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

25 (e) Referral to advisory committee.--The governing body
26 shall also, upon the termination of such 30-day period, refer
27 such proposal and proposed modifications to the Agricultural
28 Area Advisory Committee[, which shall, within 45 days]. The
29 committee shall have up to 45 days to review the proposal and
30 proposed modifications and report to the governing body its

1 recommendations concerning the proposal and proposed
2 modifications. The failure of the advisory committee to submit a
3 report within 45 days shall not prohibit the governing body from
4 conducting further proceedings or from further exercising its
5 authority pursuant to this act.

6 Section 6. Public hearings.

7 (a) Hearings.--The governing body[,] shall hold a public
8 hearing relative to the proposed agricultural area upon receipt
9 of the reports from the advisory committee and the planning
10 commission[, hold a public hearing relative to the proposed
11 agricultural area] or upon expiration of the 45-day period as
12 provided in section 5.

13 (b) Place of hearing.--The hearing shall be held at a place
14 within the proposed area or otherwise readily accessible to the
15 proposed area, such as a municipal building.

16 (c) Notice of hearing.--[A] Pursuant to the act of July 3,
17 1986 (P.L.388, No.84), known as the "Sunshine Act," a hearing
18 notice shall be published in a newspaper having a general
19 circulation within the proposed area [and]. In addition, notice
20 shall be given in writing [to those municipalities whose
21 territory encompasses the proposed area and any proposed
22 modifications and] to those landowners who proposed
23 modifications pursuant to section 5(c)[, and] or whose land is
24 included in proposed modifications, and to all landowners within
25 the proposed agricultural area. Notice also shall be given by
26 posting such notice in five conspicuous places within, adjacent
27 or near to the proposed area. Such notice shall contain the
28 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 local government unit'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.

- (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 comprehensive plans and with county comprehensive plans. Any zoning shall permit agricultural use but need not exclude other uses.

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

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

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

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

9 (2) Soil surveys and other information provided by the
10 National Cooperative Soil Survey.

11 (3) Soil survey maps prepared by the United States Soil
12 Conservation Service.

13 (4) The United States census of agricultural categories
14 of land use classes.

15 (5) [Agricultural viability maps prepared by the
16 Department of Agriculture.

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

20 Section 8. Decision on proposed area.

21 (a) Action by governing body.--The governing body, [after
22 receiving the reports of the planning commission and the
23 advisory committee, and after such public hearing] upon
24 completion of the procedures and considerations prescribed in
25 sections 5, 6 and 7, may adopt the proposal or any modification
26 of the proposal [they deem] the governing body deems
27 appropriate, including the inclusion, to the extent feasible, of
28 adjacent viable farm lands, and, the exclusion, to the extent
29 feasible, of nonviable farm land and nonfarm land. The existence
30 of utility facilities on the proposed area shall not prevent the

1 [designation of the area as "agricultural"] adoption of such
2 area as an agricultural area nor shall the rights of utilities
3 with respect to the existing facilities be disturbed or affected
4 by such [designation] adoption. The governing body shall act to
5 adopt or reject the proposal, or any modification [of it], no
6 later than 180 days from the date the proposal was originally
7 submitted. Failure by the governing body to act within this 180-
8 day period shall be deemed adoption of the proposal without
9 modification.

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

22 (c) Filing of area description.--[Upon] Within ten days of
23 the creation of an agricultural area, a description thereof
24 shall be filed by the governing body with the recorder of deeds,
25 who shall record the filing, and with the planning [commission]
26 commissions of the county and of the local government unit.
27 Filing shall be done in a manner which is sufficient to give
28 notice to all persons who have, may acquire or may seek to
29 acquire an interest in land in or adjacent to the created
30 agricultural area. Upon the failure of the governing body or

1 recorder of deeds to file or record the created agricultural
2 area in accordance with the time or manner requirements
3 prescribed in this subsection, any person adversely affected may
4 file a petition with the court of common pleas to compel
5 immediate compliance with the provisions of this subsection.

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

14 Section 9. Review of area.

15 (a) Review by governing body.--The governing body shall
16 review any area created under [this] section 8 seven years after
17 the date of its creation and every seven years thereafter. In
18 conducting such review, the governing body shall ask for the
19 recommendations of the planning commission, the county planning
20 commission and the advisory committee, and shall, at least 120
21 days prior to the end of the seventh year and not more than 180
22 days prior to such date, hold a public hearing at a place within
23 the area or otherwise readily accessible to the area [upon
24 notice]. Notice of the public hearing shall be published before
25 the hearing in a newspaper having a general circulation within
26 the area [by posting]. In addition, notice shall be posted
27 before the hearing in five conspicuous places within, adjacent
28 or near the area and [by] individual notice, in writing, shall
29 be given to those [municipalities whose territories encompass
30 the area and the person] persons owning land within the area.

1 The governing body, after [receiving the reports of] allowing
2 the planning commission, the county planning commission and the
3 advisory committee sufficient time to submit recommendations,
4 and after the public hearing, may terminate the area at the end
5 of such seven-year period [by filing a notice of termination
6 with the recorder of deeds and with the planning commission] or
7 it may modify the area in the same manner as is provided in this
8 act for the creation of agricultural areas. Within ten days of
9 its action of termination or modification, the governing body
10 shall file a notice of termination or modification with the
11 recorder of deeds, who shall record such notice in such manner
12 and place as has been provided in the original recording of the
13 agricultural area. The governing body shall also file a notice
14 of termination or modification with the planning commissions of
15 the county and of the local government unit. If the governing
16 body does not act, or if a modification of an area is rejected,
17 the area shall [continue as originally constituted] be deemed to
18 be adopted without modification for another seven years.

19 (b) [Landowner withdrawal] Changes in participation.--
20 Landowners who wish their land to be withdrawn or included in
21 the agricultural area shall notify the local governing unit of
22 their intent [at least 120 days before the end of the seventh
23 year.] in writing at least 180 days before the end of the
24 seventh year.

25 (c) Interim review.--If, within the seven-year period, 10%
26 of the land within the agricultural area is diverted to
27 residential or nonagricultural commercial development, the
28 governing body may review the diversion and may request, in
29 writing, that the local and county planning commissions and the
30 agricultural advisory committee study its review and make

1 recommendations within 30 days of the written request. The
2 governing body shall thereupon conduct a public hearing, after
3 providing the same notice as that which is required under
4 section 6(c). The hearing shall be held no sooner than 45 days
5 after the governing body has submitted written requests for
6 review and recommendation to the planning commissions and
7 advisory committee. The governing body then may terminate or
8 modify the agricultural area.

9 Section 11. Limitation on local regulations.

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

19 (b) Public nuisance.--Any municipal or political subdivision
20 law or ordinance defining or prohibiting a public nuisance shall
21 exclude from the definition of such nuisance any agricultural
22 activity or operation conducted using normal farming operations
23 within an agricultural area as permitted by this act if such
24 agricultural activity or operation does not bear a direct
25 relationship to the public health and safety.

26 Section 13. Limitation on [exercise of eminent domain] certain
27 governmental actions.

28 (a) Approval required for condemnation and for certain other
29 actions by an agency of the Commonwealth.--No agency of the
30 Commonwealth having or exercising powers of eminent domain shall

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

22 (b) Approval required for condemnation by a political
23 subdivision, authority, public utility or other body.--No
24 political subdivision, authority, public utility or other body
25 having or exercising powers of eminent domain shall condemn any
26 land within any agricultural area for any purpose, unless prior
27 approval has been obtained from Agricultural Lands Condemnation
28 Approval Board and from each of the following bodies: the
29 governing bodies of the [municipalities] local government units
30 encompassing the agricultural area, the county [commissioners]

1 governing body, and the Agricultural Area Advisory Committee.
2 Review by the [board] Agricultural Lands Condemnation Approval
3 Board and the other indicated bodies shall be in accordance with
4 the criteria and procedures established in this section. The
5 condemnation approvals specified by this subsection shall not be
6 required for an underground public utility facility or for any
7 facility of an electric cooperative corporation or for any
8 public utility facility the necessity for and the propriety and
9 environmental effects of which has been reviewed and ratified or
10 approved by the Pennsylvania Public Utility Commission or the
11 Federal Energy Regulatory Commission, regardless of whether the
12 right to establish and maintain such underground or other public
13 utility facility is obtained by condemnation, or by agreement
14 with the owner.

15 (c) Notice.--Any condemnor wishing to condemn property the
16 approval for which is required under this section shall at least
17 30 days prior to taking such action notify each of the foregoing
18 bodies that such action is contemplated, and no such
19 condemnation shall be effective until 60 days following the
20 receipt of such notice.

21 (d) Review by Agricultural Lands Condemnation Approval Board
22 and other bodies.--

23 (1) Upon receipt of such notice the [board provided for
24 in subsection (a)] Agricultural Lands Condemnation Approval
25 Board or the bodies provided for in subsection (b) jointly or
26 separately shall review the proposed condemnation in
27 accordance with the applicable criteria established in
28 paragraph (2).

29 (2) (i) In the case of condemnation for highway
30 purposes (but not including activities relating to

existing highways such as, but not limited to, widening roadways, the elimination of curves or reconstruction, for which no approval is required) and in the case of condemnation for the disposal of solid or liquid waste material, the [board] Agricultural Lands Condemnation Approval Board or other appropriate reviewing body shall approve the proposed condemnation only if it determines there is no reasonable and prudent alternative to the utilization of the land within the agricultural area for the project.

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

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

(B) there is no reasonable and prudent alternative to the utilization of the lands within the agricultural area for the project.

(e) Public hearings.--Within such 60-day period the Agricultural Lands Condemnation Board and other indicated bodies, as appropriate, shall hold a public hearing concerning the proposed condemnation at a place within or otherwise readily accessible to the area. Timely notice of such hearing shall be

1 placed in a newspaper having a general circulation within the
2 area and a written notice shall be posted at five conspicuous
3 places within or adjacent to the area. Individual written notice
4 shall also be given to all [municipalities] local government
5 units encompassing all or part of the area, to the proposed
6 condemnor, and to the owners of the land proposed to be
7 condemned.

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

18 (g) Injunctions.--The Agricultural Lands Condemnation
19 Approval Board may request the Attorney General or the bodies
20 may request their solicitor to bring an action to enjoin any
21 such condemnor from violating any of the provisions of this
22 section.

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

26 Section 14. [Purchase of development easement in agricultural
27 areas.

28 (a) Program to purchase easements.--After the establishment
29 of an agricultural area by the governing body, the county
30 governing body may authorize a program to purchase the

1 development easements for land within an agricultural area. The
2 program shall be administered by the county planning commission
3 and a farmer member from each Agricultural Area Advisory
4 Committee within the county.

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

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

23 (d) Sale of land.--A county governing body may sell any of
24 its acquired development easements as those easements are
25 defined under this act: Provided, That the local governing body,
26 which has jurisdiction over the effected land, approves the sale
27 by a majority vote of its members: And, further provided, That
28 the present owner of the land affected has refused to purchase
29 such development easement.]

30 Purchase of agricultural conservation easements.

1 (a) Agricultural Conservation Board.--There is established
2 in the Department of Agriculture of the Commonwealth the
3 Agricultural Conservation Board. The board shall have authority
4 to administer a program for purchasing agricultural conservation
5 easements from landowners whose land is within agricultural
6 areas.

7 (1) The board shall consist of 17 members, of which the
8 composition and terms shall be in accordance with the
9 following:

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

20 (ii) One member each shall be appointed by the
21 Speaker of the House, the House Minority Leader, the
22 President pro tempore of the Senate and the Senate
23 Minority Leader, who shall, at the time of appointment,
24 be an owner and operator of at least one commercial farm
25 in this Commonwealth. The term of the initial appointee
26 of the President pro tempore shall be four years, the
27 term of the initial appointee of the Speaker of the House
28 of Representatives shall be three years, the term of the
29 initial appointee of the Senate Minority Leader shall be
30 two years and the term of the initial appointee of the

1 House Minority Leader shall be one year. Thereafter, the
2 terms of those appointed herein shall be four years,
3 except that the term of a person appointed to replace
4 another member whose term has not expired shall be only
5 the unexpired portion of that term. Members may be
6 reappointed to successive years.

7 (iii) Four members shall be appointed by the
8 Governor. One member shall be a current member of the
9 governing body of a county, one shall be a current member
10 of the governing body of the local governing unit, one
11 shall be a person who is recognized as having significant
12 knowledge in agricultural fiscal and financial matters
13 and one shall be a residential building contractor.

14 Initially, one member shall be appointed for a term of
15 one year, one member shall be appointed for a term of two
16 years and ~~one member~~ TWO MEMBERS shall be appointed for a <—
17 term of three years, and thereafter, the terms of all
18 members appointed herein shall be three years, except
19 that the term for a person appointed to replace another
20 member whose term has not expired shall be only the
21 unexpired portion of that term. Members may be
22 reappointed to successive terms.

23 (iv) Nine members shall constitute a quorum for
24 purposes of conducting meetings and official actions
25 pursuant to authority given to the board under this act.

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

27 (i) To adopt rules and regulations for the
28 administration of the Statewide program for purchasing
29 agricultural conservation easements.

30 (ii) To certify programs adopted by county governing

bodies for purchasing agricultural conservation easements, in accordance with the criteria set forth in subsection (b), and to withdraw certification, after affording the county governing body notice and an opportunity for a hearing, if such county programs fail to meet the criteria.

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

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

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

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

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

(1) The county agricultural conservation board shall be composed of five, seven or nine members appointed by the county governing body, with the exception of the chairman who shall be appointed by the chairman of the county governing body. Its members shall be appointed from among the following groups: the number of farmers shall constitute one less than

1 a majority of the board, one member shall be a current member
2 of the governing body of a township or borough located within
3 the county, and the other members shall be selected at the
4 pleasure of the county governing body. The term of all
5 members shall be three years, except for the chairman, who
6 shall be appointed annually.

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

8 (i) To adopt rules and regulations for administering
9 a countywide program for purchasing agricultural
10 conservation easements in accordance with the provisions
11 of this act. This includes, but is not limited to, rules
12 and regulations for the submission of applications by
13 landowners, for appraisal of property in accordance with
14 standards and procedures adopted by the board and for
15 selection of parcels of farm land on which agricultural
16 conservation easements are to be purchased.

17 (ii) To purchase agricultural conservation easements
18 on farm lands within agricultural areas. If State funds
19 are used for this purpose, the county program must be
20 certified by the board.

21 (iii) To use moneys approved by the county governing
22 body from the county general fund to hire staff and
23 administer the program.

24 (iv) To use moneys distributed by the board and to
25 use moneys approved by the county governing body from the
26 county general fund or moneys resulting from the
27 incurrence of debt approved by the county governing body
28 for the purchase of agricultural conservation easements.
29 A county may not incur a greater debt than the lesser of
30 \$100,000 or an amount equal to 20% of the total aggregate

1 moneys appropriated from the county general fund for
2 purchase of agricultural conservation easements.

3 (v) To maintain a repository of records of land on
4 which agricultural conservation easements have been
5 purchased.

6 (vi) To exercise other discretionary powers which
7 are delegated by the county governing body or which are
8 necessary and appropriate to further the countywide
9 program for purchasing agricultural conservation
10 easements.

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

16 (i) Agricultural conservation easements shall only
17 be purchased in perpetuity or for a term of not less than
18 25 years.

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

28 (iii) The price paid for purchase of a perpetual
29 easement shall not be greater than the current fair
30 market value of the easement as determined by appraisal

1 in accordance with the standards and procedures adopted
2 by the board.

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

6 (v) The content of instruments to be executed
7 pursuant to county purchases of easements shall be
8 approved by the board in consultation with the Attorney
9 General.

10 (vi) In determining priorities for the purchase of
11 agricultural conservation easements from landowners, the
12 county board shall use objective standards and fair
13 procedures, which shall include, but not be limited to,
14 the following:

15 (A) Consideration of the quality of the farm
16 lands, including soil classifications and
17 productivity.

18 (B) Consideration of the likelihood that, unless
19 an agricultural conservation easement is purchased,
20 the farm lands would be converted to nonagricultural
21 use. Farm lands most likely to be converted will tend
22 to have priority over farm lands that are less likely
23 to be converted. For purposes of considering the
24 likelihood of conversion, the existence of a zoning
25 classification of the land shall not be relevant, but
26 the market for nonfarm use or development of farm
27 lands shall be relevant.

28 (C) The economic circumstances of individual
29 farm-land owners, but only if the landowner has made
30 an application for an emergency purchase of an

1 agricultural conservation easement under this
2 section. In other cases, economic and other
3 circumstances of the landowner shall not be
4 considered.

5 (vii) The county board shall set aside a minimum of
6 5% and a maximum of 10% of the total moneys received from
7 State and county sources during each funding cycle
8 provided in subsection (d) of this section. Such funds
9 set aside shall be utilized for emergency purchases of
10 agricultural conservation easements. Where the amount set
11 aside for emergency purchases during a funding cycle
12 exceeds the amount expended for such purchases, the
13 county board may utilize such excess in the next funding
14 cycle for nonemergency, as well as emergency,
15 agricultural easement purchases. In determining whether
16 an easement purchase is an emergency purchase and
17 determining priorities for emergency purchases, the
18 county board shall conform to the following:

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

1 operation on the land to cease.

2 (B) Consideration of emergency applications or
3 offers by the county board shall be accomplished as
4 soon as possible after an application or offer is
5 received, so that emergency purchases of easements
6 may be expedited and need not await consideration of
7 other applications and offers.

8 (4) Any county program for the purchase of agricultural
9 conservation easements or their functional equivalent, which
10 was authorized by the county governing body and has resulted
11 in the actual purchase of such easements prior to the
12 effective date of this act, shall be certified by the board
13 under subsection (a)(2)(ii), provided that it satisfies the
14 criteria of subsection (b)(3). In addition to the powers
15 enumerated in subsection (b)(2), such counties shall have the
16 authority to use State funds to purchase agricultural
17 conservation easements on agricultural lands designated for
18 open space use under section 3 of the act of January 19, 1968
19 (1967 P.L.992, No.442), entitled "An act authorizing the
20 Commonwealth of Pennsylvania and the counties thereof to
21 preserve, acquire or hold land for open space uses," prior to
22 the effective date of this act, if such agricultural lands
23 satisfy the criteria of section 7(c) of this act.

24 (c) Payment of easement purchases.--The agreed-upon purchase
25 price for agricultural conservation easements may be paid by a
26 lump sum of cash, installments over a period of years, or by any
27 other lawful method of payment. However, the county board shall
28 prescribe the method or methods of payment prior to
29 certification by the board. Where payment is to be made in
30 installments or another deferred method, the person selling the

easement may receive, in addition to the selling price, interest or other compensation relating to the deferral of payment at an amount or rate agreed to. Final payment shall not be later than five years from the date the easement purchase agreement was executed.

(d) Distribution of State funds.--The board shall adopt rules and regulations for the distribution of State funds that 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

1 following formula:

2 (i) Fifty percent of the funds available during the
3 funding cycle shall be distributed among all counties,
4 except counties of the first class, in proportion to the
5 percentage that the total annual realty transfer tax
6 revenues collected in a county during the preceding State
7 fiscal year bear to the total annual realty transfer tax
8 revenues collected Statewide, with the exception of
9 revenues of counties of the first class, during the
10 fiscal year. In calculating the percentage of each
11 county's annual realty transfer tax revenue, the amount
12 of the revenue collected in a county in excess of the
13 average amount of the revenues collected in all counties,
14 except in counties of the first class, shall not be
15 considered. There shall be no requirement that the
16 counties contribute county or other local funds toward
17 part of the purchase price of the easements.

18 (ii) Fifty percent of the funds available during the
19 funding cycle shall be distributed only among those
20 counties that have certified to the board an amount of
21 county or local funds that have been made available for
22 matching the State purchase funds made available under
23 this subsection. Counties whose annual agricultural
24 production, measured by the dollar volume of sales of
25 agricultural products in the county according to the
26 latest Census of Agriculture, equals or exceeds 2% of the
27 total annual agricultural production in this Commonwealth
28 during the same year shall be required to make available
29 \$1 for every \$8 the Commonwealth contributes under this
30 subsection for the purpose of easement purchases. Other

1 counties eligible under this section shall be required to
2 make available \$1 for every \$4 the Commonwealth
3 contributes. The State funds available under this
4 subsection shall be distributed among eligible counties
5 in amounts equal to the funds made available by each
6 county, multiplied by eight or four, as appropriate. If
7 the total State funds available under this subsection
8 during the funding cycle are not sufficient to match the
9 total available county funds during that cycle, then the
10 State funds shall be distributed pro rata among eligible
11 counties in proportion to the percentage that the funds
12 made available by each county, multiplied by eight or
13 four, as appropriate, bears to the total that all
14 eligible counties would be entitled to by applying this
15 formula.

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

17 Section 14.1. Agricultural Conservation Easement Purchase Fund.

18 There is hereby created a restricted account known as the
19 Agricultural Conservation Easement Purchase Fund., which shall <—
20 be funded in accordance with the provisions of section 1106 C of
21 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
22 Code of 1971. The moneys appropriated in this restricted account
23 shall be utilized in accordance with the expenditures and
24 distribution authorized, required or otherwise provided in the
25 program for purchase of agricultural conservation easements
26 contained in section 14.

27 Section 3. The sum of \$25,000,000 is hereby appropriated to
28 the Agricultural Conservation Easement Purchase Fund to carry
29 out the purposes of this act. This shall be a continuing
30 appropriation.

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