Testimony

House Agriculture and Rural Affairs Committee Regarding the Pennsylvania Farmland and Forestland Assessment Act (Clean and Green Act)

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Offered by
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Good afternoon. I am John Bell. I am Governmental Affairs Counsel for Pennsylvania Farm Bureau, on whose behalf I appear before the Committee today. Pennsylvania Farm Bureau is a statewide general farm organization that represents more than 44,000 farm and rural families in the Commonwealth. We appreciate the opportunity to offer testimony today to provide you with our views regarding Pennsylvania's Clean and Green Act and issues that the General Assembly should focus on as it considers legislation to further strengthen the Act and accomplish the Act's purposes.

Let me state at the outset that our organization strongly believes that this Act has been good for Pennsylvania and its agriculture. Ownership and use of large amounts of land is a necessary component to the economic viability of Pennsylvania farm operations. Certainly, many farm families are substantially burdened by the high level of property taxes they pay. But the ability to receive preferential tax assessment value lessens the even harsher tax bite that farm families would otherwise have to endure if their farms were assessed at fair market value. And you should not forget the real economic opportunity that preferential assessment provides in facilitating the rental of productive farmland to farmers. The Clean and Green Act has helped to make rental of farmland a viable economic option for landowners, and affordable to farmers who need additional production to sustain their businesses.

We also believe that the General Assembly has historically done a good job both in providing reasonably clear direction of intended statutory interpretation within the Act's statutory provisions and in making timely amendments to the Act in response to changing circumstances and skewed interpretations that may lead to unreasonable and unfair results.

In 1998, the General Assembly made major changes to the Act to eliminate a number of creative interpretations of the Act made by administrative officials that, in our opinion, violated the Act's spirit and severely negated the Act's intended benefits to farmers and landowners. The 1998 amendments also provided a "rural enterprise" allowance for use of Clean and Green land with minor tax penalty to help farm families economically sustain themselves through additional family enterprises on their farm.

Other amendments to the Act recognized and reasonably accommodated access and use of limited areas of rural land for particular public benefit and use. Without these amendments, Clean and Green landowners would have had bear harsh tax penalties for allowing any portion of their land for governmental use, use by fire companies, use by churches, use as cemeteries, trail use, or mobile communications use. None of the uses accommodated through these amendments destroy the essential character or use of Clean and Green property as farmland, forestland or open space land.

The most recent amendment to the Act, Act 235 of 2004, which accommodates landowners' ability to use Clean and Green land commercially for agritainment and recreational enterprises, is another example of the of the legislature's earnest effort to keep the Act a workable statute.

While very few statutes are perfect and fair in every application, the General Assembly has done a responsible job in keeping the Clean and Green Act current with the practical realities of farm and land ownership and reasonably balancing the often-conflicting objectives for landowners not to be onerously burdened with property tax with the needs of communities to receive sufficient tax revenues through property taxation.

I would like to identify several areas for this Committee and the General Assembly to give particular attention in any future legislative amendments to the Clean and Green Act.

1. Allowance for gas and oil leasing and exploration.

The first area you should address and clarify in statute is the legal effect of engaging Clean and Green lands in leases for gas or oil exploration and in gas or oil drilling or extraction.

You are no doubt aware of the recent discovery of natural gas and projections for massive quantities of natural gas within the Marcellus shale formation, located along the northern tier and in the southwest part of Pennsylvania. As you would expect, this discovery has created a flurry of

activity in these areas for leasing land and performing gas exploration and well drilling. But many properties within the Marcellus shale region are enrolled in Clean and Green. And no statutory or regulatory guidance is currently provided on the manner or degree to which the Act applies in transactions or activities that will likely occur from gas development in the Marcellus region.

In the 1990s, there was no problem in understanding how the Act was to be applied to gas or oil activities conducted on Clean and Green land. The regulations then existing clearly recognized that gas and oil exploration was allowed on Clean and Green land without reservation. So tax penalties would not be imposed if a Clean and Green landowner allowed or provided for gas or oil wells on the property. However, the governing regulation was deleted in regulatory amendments promulgated in 2001, creating a legal limbo for interpretation and differing legal interpretations among counties administering the Act.

Farm Bureau would encourage the General Assembly to prescribe in statute the legal position reflected in regulations before 2001, which recognizes that use of Clean and Green land for gas or oil extraction is authorized under the Act and that no tax consequences will befall a Clean and Green landowner who authorizes or conducts gas or oil well drilling or extraction activities on his or her land.

2. Classification of lands that are part of working farms.

You should also consider enacting provisions to give clearer statutory guidance to county officials in their analysis and determination of how to classify working farms under the Act. Although thousands of farms enrolled under Clean and Green are legitimately operated as farm business enterprises, the land characteristics of operating farm enterprises may distinctly vary from one area of the farm to another and from one acre to the next.

It is not uncommon, for example, for a 100-acre farm to have significant portions of land area in which existing characteristics of woods, soils or slope make the portions unfeasible for direct use in agricultural production. But these portions play a positive role in defining the farm and providing buffer and natural protection to those portions that are more directly used in production. To the farmer and to most reasonable-minded persons, the entire 100-acre area would be considered a part of a single working farm unit.

Historically, county officials applied the spirit of the Act in viewing the 100-acre farm as a single farm unit and classifying the entire 100 acres in the "agricultural use" category. But with the enactment of Act 235 of 2004's amendment to remove preferential assessment of "curtilage" within areas not classified in the "agricultural use" category, some officials have attempted to scrutinize agricultural use classifications originally assigned by the county to working farms, and apply an area-specific approach, rather

than a working-unit approach, in determining whether curtilage on a working is to be assessed at the higher fair market assessment value.

We firmly believe that neither the original Clean and Green Act nor any amendments to the Act – including Act 235 – was ever intended to cause officials to perform an intricate analysis of function and classification of each acre of a working farm. Officials' attempt to do so violates the general spirit of the Act to provide meaningful tax assessment benefits to those owning or operating productive agricultural enterprises.

3. Providing more constant application of assessment values.

We also ask for your consideration of amendments to the Act that would establish more constant application of Clean and Green values by counties from year-to-year. For properties not enrolled in Clean and Green, assessment values do not normally change from year-to-year, and do not normally change at all until the occurrence of a countywide reassessment. But with Clean and Green properties, the Act allows for annual adjustments in tax assessment values.

We have been concerned with the consistent upward creep in annual assessment values in recent years from application of formulas for determining use values of Clean and Green land. And with this year's drastic increase in corn prices and the fact that the value of corn is a major factor in determining use value assessments under most formulas, we have even greater cause for concern.

Regulations to the Clean and Green Act authorize counties to apply a "base year" method for assignment tax assessment values to Clean and Green properties. This method allows counties to keep assessment values constant in succeeding years until a new "base year" is established. Wholesale changes in values of Clean and Green properties would likely occur at the same time as wholesale changes to properties other than Clean and Green – during a countywide reassessment. We would encourage you to consider changes to the Act to maintain constancy of tax assessment values of Clean and Green properties from year to year.

4. Allowance for alternative energy development.

We also believe the provisions of the Clean and Green Act need to be modified to facilitate the growing effort for development of alternative and renewable sources of energy generation. Legislation such as House Bill 656 – which this Committee favorably reported last year– would impose limited and more financially manageable tax consequences for the use of Clean and Green lands for development of wind-powered energy generation.

The use of limited areas of Clean and Green land for alternative energy infrastructure will help satisfy a serious energy need for Pennsylvania without jeopardizing the integrity of agricultural, forest and open space uses that the Clean and Green Act intended for enrolled lands.

House Bill 1960 and House Bill 667.

I understand that the Committee is seeking specific comment on two bills currently before the Committee – House Bills 1960 and House Bill 667. We do not believe sufficient direction has been given in policy positions adopted by our organization to express a definitive position on either bill. Each bill has features that may be viewed positively or negatively by our members. However, we would try to provide more specific input, should this Committee or the General Assembly wish to take action on either bill in the future.

Farm Bureau wants to thank you again for this opportunity today to share with you our views regarding Pennsylvania's Clean and Green Act and amendments to the Act that you may wish to consider in the future. I will try to answer any questions you may have.