

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 505 Session of 2009

INTRODUCED BY ROSS, BARRAR, BEYER, BOYD, CALTAGIRONE, CLYMER, CREIGHTON, EVERETT, FLECK, FRANKEL, GEIST, GIBBONS, GINGRICH, GROVE, GRUCELA, HESS, KILLION, LONGIETTI, MANN, MILLER, MILNE, MOUL, O'NEILL, READSHAW, REICHLEY, SCAVELLO, SIPTROTH, STERN, SWANGER, WATSON AND YOUNGBLOOD, FEBRUARY 18, 2009

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, FEBRUARY 18, 2009

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 the purchase of agricultural conservation
4 easements.

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

7 Section 1. Section 14.1(c) and (i) of the act of June 30,
8 1981 (P.L.128, No.43), known as the Agricultural Area Security
9 Law, amended November 3, 1994 (P.L.621, No.96), December 21,
10 1998 (P.L.1056, No.138) and November 1, 2005 (P.L.323, No.61),
11 are amended and the section is amended by adding a subsection to
12 read:

13 Section 14.1. Purchase of agricultural conservation easements.

14 * * *

15 (c) Restrictions and limitations.--An agricultural
16 conservation easement shall be subject to the following terms,
17 conditions, restrictions and limitations:

1 (1) The term of an agricultural conservation easement
2 shall be perpetual.

3 (2) Unless otherwise authorized in accordance with
4 subsection (i), an agricultural conservation easement shall
5 not be sold, conveyed, extinguished, leased, encumbered or
6 restricted in whole or in part for a period of 25 years
7 beginning on the date of purchase of the easement.

8 (3) Unless otherwise authorized in accordance with
9 subsection (i), if the land subject to the agricultural
10 conservation easement is no longer viable agricultural land,
11 the Commonwealth, subject to the approval of the State board,
12 and the county, subject to the approval of the county board,
13 may sell, convey, extinguish, lease, encumber or restrict an
14 agricultural conservation easement to the current owner of
15 record of the farmland subject to the easement after the
16 expiration of 25 years from the date of purchase of the
17 easement for a purchase price equal to the value at the time
18 of resale determined pursuant to subsection (f) at the time
19 of conveyance. A conveyance by the Commonwealth pursuant to
20 this subsection shall not be subject to the requirements of
21 Article XXIV-A of the act of April 9, 1929 (P.L.177, No.175),
22 known as "The Administrative Code of 1929." The purchase
23 price shall be payable to the Commonwealth and the county as
24 their respective legal interests in the agricultural
25 conservation easement appear, and a separate payment shall be
26 made to the Commonwealth and the county accordingly at the
27 time of settlement. Any payment received by the Commonwealth
28 pursuant to this provision shall be paid into the fund.

29 (4) Instruments and documents for the purchase, sale and
30 conveyance of agricultural conservation easements shall be

1 approved by the State board or the county board, as the case
2 may be, prior to execution and delivery. Proper releases from
3 mortgage holders and lienholders must be obtained and
4 executed to insure that all agricultural conservation
5 easements are purchased free and clear of all encumbrances.

6 (5) Whenever any public entity, authority or political
7 subdivision exercises the power of eminent domain and
8 condemns land subject to an agricultural conservation
9 easement, the condemnor shall provide just compensation to
10 the owner of the land in fee and to the owner of the easement
11 as follows:

12 (i) The owner of the land in fee shall be paid the
13 full value which would have been payable to the owner but
14 for the existence of an agricultural conservation
15 easement less the value of the agricultural conservation
16 easement at the time of condemnation.

17 (ii) The owner of the easement shall be paid the
18 value of the easement at the time of condemnation.

19 (iii) For easements owned jointly by the
20 Commonwealth and an eligible county, if the eligible
21 county commits its share of funds received under this
22 paragraph toward the purchase of agricultural
23 conservation easements, the condemnor shall provide the
24 Commonwealth's share of funds to the eligible county for
25 use in purchasing agricultural conservation easements in
26 accordance with this act.

27 (iv) For easements owned by the Commonwealth, the
28 condemnor shall provide the Commonwealth's share of funds
29 received under this paragraph to the eligible county for
30 use in purchasing agricultural conservation easements in

1 accordance with this act.

2 (v) Funds received by an eligible county under this
3 paragraph shall not be considered matching funds under
4 subsection (h).

5 (vi) If an eligible county which receives funds
6 under this paragraph fails to spend the Commonwealth's
7 share of funds within two years of receipt of the funds,
8 the eligible county shall pay the Commonwealth the
9 Commonwealth's share of funds received under this
10 paragraph plus 6% simple interest. These funds shall be
11 deposited into the Agricultural Conservation Easement
12 Purchase Fund.

13 (6) An agricultural conservation easement shall not
14 prevent:

15 (i) The granting of leases, assignments or other
16 conveyances or the issuing of permits, licenses or other
17 authorization for the exploration, development, storage
18 or removal of coal by underground mining methods, oil and
19 gas by the owner of the subject land or the owner of the
20 underlying coal by underground mining methods, oil and
21 gas or the owner of the rights to develop the underlying
22 coal by underground mining methods, oil and gas, or the
23 development of appurtenant facilities related to the
24 removal of coal by underground mining methods, oil or gas
25 development or activities incident to the removal or
26 development of such minerals.

27 (ii) The granting of rights-of-way by the owner of
28 the subject land in and through the land for trails for
29 nonmotorized use, in accordance with paragraphs (9) and
30 (10) or for the installation of, transportation of, or

1 use of water, sewage, electric, telephone, coal by
2 underground mining methods, gas, oil or oil products
3 lines.

4 (iii) Construction and use of structures on the
5 subject land necessary for agricultural production or a
6 commercial equine activity.

7 (iv) Construction and use of structures on the
8 subject land for the landowner's principal residence or
9 for the purpose of providing necessary housing for
10 seasonal or full-time employees: Provided, That only one
11 such structure may be constructed on no more than two
12 acres of the subject land during the term of the
13 agricultural conservation easement[.]: and Provided
14 further, That the owner of the land subject to the
15 agricultural conservation easement may relinquish and
16 extinguish the right of construction and use of
17 structures conferred by this clause by recording, in the
18 office for the recording of deeds in the county in which
19 the land subject to the agricultural conservation
20 easement is located, an affidavit evidencing the intent
21 to relinquish and extinguish.

22 (v) Customary part-time or off-season minor or rural
23 enterprises and activities which are provided for in the
24 county Agricultural Conservation Easement Purchase
25 Program approved by the State board under subsection (d).

26 (vi) Commercial equine activity on the subject land.

27 (7) Land subject to an agricultural conservation
28 easement shall not be subdivided for any purpose which may
29 harm the economic viability of the farmland for agricultural
30 production. Land may be subdivided prior to the granting of

1 an agricultural conservation easement, provided that
2 subdividing will not harm the economic viability for
3 agricultural production of the land subject to the easement.

4 (8) Nothing in this act shall prohibit a member of the
5 State board or county board or his or her family from selling
6 a conservation easement under this program, provided that all
7 decisions made regarding easement purchases be subject to the
8 provisions of section 3(j) of the act of October 4, 1978
9 (P.L.883, No.170), referred to as the Public Official and
10 Employee Ethics Law.

11 (9) The owner of the land subject to an agricultural
12 conservation easement may permit or authorize the use of a
13 portion of the subject land for a trail under the following
14 conditions:

15 (i) the portion of land does not exceed 20 feet in
16 width;

17 (ii) the portion of land is used as a trail for
18 nonmotorized passive recreational use;

19 (iii) the portion of land is available to the public
20 for use without charge; and

21 (iv) the use of the portion of land as a trail does
22 not convert land which is devoted primarily to
23 agricultural production or commercial equine activity.

24 (10) If the owner of land subject to an agricultural
25 conservation easement permits or authorizes the use of a
26 portion of the subject land for a trail under paragraph (9),
27 the owner may enter into an agreement with a local government
28 unit or an eligible nonprofit entity permitting or
29 authorizing its use of the portion of land as a trail. The
30 agreement shall be recorded with the county recorder of

1 deeds.

2 * * *

3 (i) Subdivision of land after easement purchase.--

4 (1) Each county program shall specify the conditions
5 under which the subdivision of land subject to an
6 agricultural conservation easement may be permitted. In no
7 case, however, shall a county program permit a subdivision
8 which will:

9 (i) harm the economic viability of the farmland for
10 agricultural production; or

11 (ii) convert land which has been devoted primarily
12 to agricultural use to another primary use, except that a
13 county program may permit one subdivision for the purpose
14 of the construction of a principal residence for the
15 landowner or an immediate family member, subject to this
16 right being relinquished and extinguished in accordance
17 with subsection (c) (6) (iv).

18 (2) The county board may agree to permit a parcel of
19 land subject to an agricultural conservation easement to be
20 subdivided after the granting of such easement as follows:

21 (i) The landowner of record may submit an
22 application, in such form and manner as the county board
23 may prescribe, to the county board requesting that a
24 parcel of the land subject to an easement be subdivided.
25 Upon receipt of the application, the county board shall
26 cause to be forwarded written notification thereof to the
27 county zoning office, county planning office and county
28 farmland preservation office, herein referred to as the
29 reviewing agencies. Each reviewing agency shall have 60
30 days from receipt of such notification to review, comment

1 and make recommendations on the proposed application to
2 the county board.

3 (ii) After reviewing the application and the
4 comments and recommendations submitted by the reviewing
5 agencies, the county board shall approve or reject the
6 application to subdivide within 120 days after the date
7 of its filing unless the time is extended by mutual
8 agreement of the landowner and reviewing agencies.

9 (iii) If the application to subdivide land is
10 approved by the county board, a copy of the application,
11 along with the comments and recommendations of the
12 reviewing agencies, shall be forwarded to the State board
13 for review and approval or disapproval. When reviewing an
14 application to subdivide land subject to an agricultural
15 conservation easement, the State board shall consider
16 only whether the application complies with the conditions
17 under which subdivisions are permitted by the approved
18 county program. The State board shall notify the county
19 board of its decision regarding the application.

20 (iv) If the application to subdivide is rejected by
21 the county board, the application shall be returned to
22 the landowner with a written statement of the reasons for
23 such rejection. Within 30 days after the receipt of the
24 statement of rejection, the landowner may appeal the
25 rejection in accordance with 2 Pa.C.S. Ch. 5 Subch. B
26 (relating to practice and procedure of local agencies)
27 and Ch. 7 Subch. B (relating to judicial review of local
28 agency action).

29 * * *

30 (1) Ordinances.--Notwithstanding the provisions of the act

1 of July 31, 1968 (P.L.805, No.247), known as the "Pennsylvania
2 Municipalities Planning Code," or any other provision of law, an
3 ordinance may not authorize the transfer of development rights
4 from land subject to an agricultural conservation easement.
5 Ordinances that have created transferable development rights
6 shall be deemed amended consistent with this subsection.

7 Section 2. This act shall take effect in 60 days.