

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1237 Session of
2009

INTRODUCED BY O'NEILL, CREIGHTON, GEIST, HENNESSEY, JOSEPHS,
MELIO, MOUL, MURT, PETRI, READSHAW, SIPTROTH, VULAKOVICH,
WATSON AND YOUNGBLOOD, APRIL 8, 2009

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, APRIL 8, 2009

AN ACT

1 Authorizing municipalities to acquire highway corridor
2 conservation easements; and providing for highway corridor
3 overlay zoning and for outdoor advertising permits.

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 Highway
8 Corridor Enhancement Act.

9 Section 2. Purpose.

10 The purpose of this act is:

11 (1) To provide municipalities with alternative means to
12 retain or protect, for the public and economic benefit, the
13 natural, historical, architectural, archeological, cultural,
14 scenic or open space values of real property along public
15 highway corridors.

16 (2) To better enable municipalities to control the
17 erection and maintenance of outdoor advertising devices in
18 areas along the highways within this Commonwealth in order:

1 (i) To assure the reasonable, orderly and effective
2 display of outdoor advertising while protecting the
3 public investment in the Federal, State and local
4 highways.

5 (ii) To promote the welfare, convenience and
6 recreational value of public travel.

7 (iii) To preserve natural beauty.

8 Section 3. Definitions.

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

12 "Comprehensive plan." A municipal, multimunicipal or county
13 comprehensive plan as delineated in the act of July 31, 1968
14 (P.L.805, No.247), known as the Pennsylvania Municipalities
15 Planning Code.

16 "Department." The Department of Transportation of the
17 Commonwealth.

18 "Highway." A portion of right-of-way that is open to the use
19 of the public for purposes of vehicular travel. The term does
20 not include an unimproved right-of-way, private road or drive.

21 "Highway corridor conservation easement." A nonpossessory
22 interest in real property, whether appurtenant or in gross,
23 imposing limitations or affirmative obligations, the purposes of
24 which may include, but are not limited to:

25 (1) retaining or protecting for the public and economic
26 benefit the natural, scenic or open space values of real
27 property adjacent to or within view of highways;

28 (2) assuring its availability for agricultural, forest,
29 recreational or open space use;

30 (3) protecting, conserving or managing the use of

1 natural resources;

2 (4) protecting wildlife;

3 (5) maintaining or enhancing land, air or water quality
4 or preserving the historical, architectural, archaeological
5 or cultural aspects of real property adjacent to, or within
6 view of, highways. Such interest may impose limitations on
7 the use of the property for outdoor advertising devices for
8 such purposes.

9 "Land trust." A charitable corporation, charitable
10 association or charitable trust that is registered with the
11 Bureau of Charitable Organizations of the Department of State
12 and is exempt from taxation pursuant to section 501(c)(3) of the
13 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
14 501(c)(3)) or other Federal or Commonwealth statutes or
15 regulations, the purposes or powers of which include:

16 (1) retaining or protecting the natural, scenic,
17 agricultural or open space values of real property;

18 (2) assuring the availability of real property for
19 agricultural, forest, recreational or open space use;

20 (3) protecting, conserving or managing the use of
21 natural resources;

22 (4) protecting wildlife;

23 (5) maintaining or enhancing land, air or water quality;

24 or

25 (6) preserving the historical, architectural,
26 archaeological or cultural aspects of real property.

27 "Municipality." Either of the following:

28 (1) a municipal corporation as defined in 1 Pa.C.S. §
29 1991 (relating to definitions) or any similar general purpose
30 unit of local government; or

1 (2) a unit created by joint action of two or more
2 municipalities that is authorized to be created by the
3 General Assembly, including cooperation by two or more
4 municipalities in accordance with 53 Pa.C.S. Ch. 23 Subch. A
5 (relating to intergovernmental cooperation).

6 "Outdoor advertising device." An outdoor sign, display,
7 light, figure, painting, drawing, message, plaque, poster,
8 billboard or other object that is designed, intended or used to
9 advertise or inform. The term does not include:

10 (1) An official sign and notice that is required or
11 authorized by law and conforms to the national standards
12 promulgated by the Secretary of Transportation of the United
13 States pursuant to 23 U.S.C. § 131 (relating to control of
14 outdoor advertising).

15 (2) An outdoor advertising device that advertises the
16 sale or lease of the real property on which it is located.

17 (3) An outdoor advertising device that advertises an
18 activity conducted on the property on which it is located.

19 (4) A directional sign including, but not limited to, a
20 sign pertaining to natural wonders, scenic and historical
21 attractions and other points of interest to the traveling
22 public that conforms to the national standards promulgated by
23 the Secretary of Transportation of the United States pursuant
24 to 23 U.S.C. § 131 (relating to control of outdoor
25 advertising).

26 (5) An outdoor advertising device in the specific
27 interest of the traveling public that is authorized to be
28 erected or maintained by the Secretary of Transportation of
29 the Commonwealth and is designed to give information in the
30 interest of the traveling public.

1 "Right-of-way." The entire area of land contiguous with and
2 including a highway, that either:

3 (1) the Department of Transportation or a municipality
4 has acquired for highway purposes; or

5 (2) the Department of Transportation or a municipality
6 otherwise has lawful rights of access, occupation,
7 construction and maintenance for highway purposes.

8 "Secretary." The Secretary of Transportation of the
9 Commonwealth.

10 Section 4. Highway corridor conservation easements.

11 (a) Authorization.--In accordance with the act of June 22,
12 2001 (P.L.390, No.29), known as the Conservation and
13 Preservation Easements Act, a land trust or municipality may
14 acquire by purchase, contract, gift or devise a highway corridor
15 conservation easement.

16 (b) Scope.--A highway corridor conservation easement may
17 encompass an entire fee simple interest in a parcel or real
18 property or any portion thereof or an estate therein.

19 (c) Assessment.--

20 (1) A highway corridor conservation easement interest
21 acquired by a municipality or a land trust under this act
22 shall be held for public purpose and shall be exempt from
23 taxation.

24 (2) The assessment of a private interest in land subject
25 to a highway conservation easement interest under this act
26 shall reflect any change in market value of the property that
27 may result from the acquisition of a conservation easement
28 interest by a municipality or a land trust.

29 (d) Limitations and planning requirements.--

30 (1) (i) A municipality may not acquire a highway

1 corridor conservation easement unless the real property
2 has been designated for any of the purposes of such an
3 easement in a park, recreation and open space plan, or
4 its equivalent, or a comprehensive plan recommended by
5 the planning commission of the municipality in which the
6 real property is located and adopted by the governing
7 body of that municipality.

8 (ii) Where the municipality in which the real
9 property to be acquired is located has no planning
10 commission, the municipality may not acquire a highway
11 corridor conservation easement unless the real property
12 has been designated for any of the purposes of such
13 easement in a park, recreation and open space plan, or
14 its equivalent, or a comprehensive plan approved by the
15 planning commission of the county in which the real
16 property is located and adopted by the governing body of
17 the municipality wherein the real property is located.

18 (2) The use of a highway corridor conservation easement
19 may not serve a de facto exclusionary purpose if the highway
20 corridor conservation easement is acquired or held by a
21 municipality.

22 (e) Construction.--Nothing contained in this section shall
23 be construed as altering, modifying or superseding either the
24 method of creating an agricultural conservation easement or the
25 rights, duties, powers and obligations appurtenant to such
26 easements under the provisions of the act of December 19, 1974
27 (P.L.973, No.319), known as the Pennsylvania Farmland and Forest
28 Land Assessment Act of 1974, the act of June 30, 1981 (P.L.128,
29 No.43), known as the Agricultural Area Security Law, and
30 preservation of coal rights as provided in section 9 of the

1 Conservation and Preservation Easements Act.

2 Section 5. Highway corridor overlay zoning.

3 (a) Establishment of highway corridor overlay districts.--

4 Pursuant to the act of July 31, 1968 (P.L.805, No.247), known as

5 the Pennsylvania Municipalities Planning Code, a municipality

6 may establish a highway corridor overlay district within 660

7 feet of the nearest edge of the right-of-way of any highway or

8 portion of a highway within the municipality in order to further

9 promote the purposes of this act. The zoning ordinance or

10 amendment thereto establishing the highway corridor overlay

11 district may include, but shall not be limited to, any of the

12 following:

13 (1) Restrictions of commercial or industrial use or

14 development of property within the district, including

15 limitations on the use of property for outdoor advertising

16 devices.

17 (2) (i) Restrictions on destruction, damage,

18 disturbance or removal of vegetation within the district

19 for a purpose other than for agriculture, farming,

20 forestry or parks and recreation.

21 (ii) Nothing contained in this paragraph shall be

22 construed as altering, modifying or superseding the

23 provisions of the act of December 20, 1983 (P.L.293,

24 No.79), known as the Highway Vegetation Control Act.

25 (3) Provisions for the abandonment and removal of any

26 lawful use of property deemed nonconforming by the enactment

27 of the zoning ordinance or amendment establishing the

28 district.

29 (b) Consent required for removal of lawful use.--Any lawful

30 use of property deemed nonconforming by the establishment of a

1 highway corridor overlay district and not abandoned may not be
2 removed without the consent of the owner thereof unless just
3 compensation is paid in accordance with law.

4 (c) Limitation.--The enactment or enforcement of a zoning
5 ordinance or amendment establishing a highway corridor overlay
6 district may not prohibit an otherwise lawful use of property
7 from occurring anywhere within the municipality.

8 (d) Plans required.--

9 (1) Highway corridor overlay zoning shall be designated
10 in a park, recreation and open space plan, or its equivalent,
11 or a comprehensive plan recommended by the planning
12 commission of the municipality in which the real property is
13 located and adopted by the governing body of that
14 municipality.

15 (2) Where the municipality in which highway corridor
16 overlay zoning is proposed has no planning commission, a
17 municipality may not establish a highway corridor overlay
18 district unless it has been designated in a park, recreation
19 and open space plan, or its equivalent, or a comprehensive
20 plan approved by the planning commission of the county in
21 which the real property is located and adopted by the
22 governing body of the municipality wherein the real property
23 is located.

24 (e) Definitions.--For purposes of this section, the term
25 "commercial or industrial use or development of property" does
26 not include:

27 (1) Agricultural, forestry, grazing, farming and related
28 activities, including, but not limited to, wayside fresh
29 produce stands for which at least 50% of the commodities sold
30 are produced on the property.

1 (2) "Official signs and notices," "public utility signs"
2 and "public service signs," as defined in the act of December
3 15, 1971 (P.L.596, No.160), known as the Outdoor Advertising
4 Control Act of 1971, and the regulations promulgated under
5 that act.

6 Section 6. Outdoor advertising permits.

7 (a) Ordinances authorized.--Subject to the provisions of
8 subsection (b), a municipality may, by ordinance, provide for
9 permitting of outdoor advertising devices proposed, constructed
10 or maintained within the limits of the municipality in order to
11 promote the purposes of this act.

12 (b) Contents of ordinance.--Any ordinance enacted under the
13 authority of this section shall include, but not be limited to,
14 any of the following:

15 (1) (i) In a municipality without zoning, reasonable,
16 objective standards for the construction, location, size,
17 spacing, lighting and maintenance of outdoor advertising
18 in accordance with the act of December 15, 1971 (P.L.596,
19 No.160), known as the Outdoor Advertising Control Act of
20 1971, and the regulations promulgated thereunder.

21 (ii) Issuance, continuation or renewal of any permit
22 shall be conditioned upon compliance with such standards.
23 The ordinance shall provide that any outdoor advertising
24 device in violation of the Outdoor Advertising Control
25 Act of 1971 is in violation of the ordinance and subject
26 to penalty or removal.

27 (iii) Nothing in this paragraph shall be construed
28 to prohibit a municipality from establishing reasonable,
29 objective standards that exceed those of this act.

30 (2) In a municipality with zoning, provisions

1 conditioning the issuance, continuation or renewal of a
2 permit in compliance with all applicable ordinances enacted
3 pursuant to the act of July 31, 1968 (P.L.805, No.247), known
4 as the Pennsylvania Municipalities Planning Code.

5 (3) (i) Provisions for the submission and prompt review
6 of an application for a permit that may require the
7 applicant to provide drawings, design specifications,
8 leases or other information relevant to the determination
9 that the sign is in compliance with all applicable
10 municipal ordinances.

11 (ii) In no event shall the review of a permit
12 application exceed 60 days.

13 (iii) The decision to issue, renew or deny a permit
14 shall be in writing and, in a case where a permit is
15 denied, shall recite the appropriate sections of any
16 ordinance upon which such denial is based.

17 (4) (i) Provisions for the designation of a sign
18 administrator whose duties shall include, but not be
19 limited to, the issuance of permits and written decisions
20 as required by this section and the enforcement of any
21 ordinance enacted under this section.

22 (ii) The sign administrator shall conduct
23 inspections, issue citations and notices and initiate any
24 appropriate action in accordance with law in instances of
25 noncompliance.

26 (iii) The sign administrator may not be a member of
27 the governing body of the municipality.

28 (5) (i) Provisions for an appeal to the governing body
29 of the municipality for review of a decision of the sign
30 administrator in accordance with the provisions of 2

Pa.C.S. Ch. 5 Subch. B (relating to practice and procedure of local agencies) and Ch. 7 Subch. B (relating to judicial review of local agency action).

(ii) Nothing in this paragraph shall be construed to limit the right of any party to further appeal to the court of common pleas of the county.

(6) Provisions for reasonable, annual permit fees.

(7) Provisions for the revocation of a permit, removal of an abandoned sign and the impositions of fines and penalties not to exceed \$1,000 per violation. The ordinance may provide that a separate offense shall arise for each day or portion thereof in which a violation is found to exist or for each section of the ordinance that is found to have been violated.

(c) Prohibited provisions.--No ordinance enacted pursuant to this section may:

(1) Regulate the content or viewpoint of an outdoor advertising device.

(2) Be administered or applied in such a manner as to totally prohibit outdoor advertising devices within the municipality.

(3) Be administered or applied to impair contracts existing on the effective date of the ordinance.

Section 7. Other laws.

The powers and duties granted to a municipality under this act shall be considered supplemental to any other municipal power and shall not be interpreted as preempted or superseded by any other act unless expressly so provided.

Section 8. Effective date.

This act shall take effect in 60 days.