

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1394 Session of
2009

INTRODUCED BY HOUGHTON, HANNA, GEORGE, GERGELY, CALTAGIRONE,
CARROLL, DALEY, GODSHALL, KESSLER, KORTZ, MILLARD, SIPTROTH,
SOLOBAY, WHITE, ROAE, BRADFORD, MCILVAINE SMITH, YOUNGBLOOD,
GIBBONS, MATZIE AND MENSCH, APRIL 30, 2009

SENATOR CORMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, OCTOBER 12, 2010

AN ACT

1 Amending the act of December 19, 1974 (P.L.973, No.319),
2 entitled "An act prescribing the procedure under which an
3 owner may have land devoted to agricultural use, agricultural
4 reserve use, or forest reserve use, valued for tax purposes
5 at the value it has for such uses, and providing for
6 reassessment and certain interest payments when such land is
7 applied to other uses and making editorial changes," further
8 providing for definitions, ~~for responsibilities of the county~~ ←
9 ~~assessor in general, AND, for split-off, separation or~~ ←
10 ~~transfer of land and for roll back taxes and special~~ ←
11 ~~circumstances~~ AND FOR PENALTY FOR INELIGIBLE USE; and ←
12 providing for removal of land from preferential assessment.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. The definitions of "agricultural reserve,"
16 "agricultural use" and "forest reserve" in section 2 of the act
17 of December 19, 1974 (P.L.973, No.319), known as the
18 Pennsylvania Farmland and Forest Land Assessment Act of 1974,
19 amended December 21, 1998 (P.L.1225, No.156) and December 8,
20 2004 (P.L. 1785, No.235), are amended and the section is amended
21 by adding definitions to read:

Section 2. Definitions.--As used in this act, the following words and phrases shall have the meanings ascribed to them in this section unless the context obviously otherwise requires:

* * *

"Agricultural reserve." Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for such use, without charge or fee, on a nondiscriminatory basis. The term includes any land devoted to the development and operation of an alternative energy system, if a majority of the energy annually generated is utilized on the tract~~in the production of an agricultural commodity or in activities performed on the farmstead land.~~

"Agricultural use." Land which is used for the purpose of producing an agricultural commodity or is devoted to and meets the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government. The term includes:

(1) any farmstead land on the tract[. The term includes];

(2) a woodlot [and];

(3) any land which is rented to another person and used for the purpose of producing an agricultural commodity; and

(4) any land devoted to the development and operation of an alternative energy system, if a majority of the energy annually generated is utilized on the tract~~in the production of an agricultural commodity or in activities performed on the farmstead land.~~

* * *

"Alternative energy." Electricity, heat or other usable form of energy generated from a Tier I energy source.

1 "Alternative energy system." A facility or energy system
2 that utilizes a Tier I energy source to generate alternative
3 energy. The term includes a facility or system that generates
4 alternative energy for utilization onsite or for delivery of the
5 energy generated to an energy distribution company or to an
6 energy transmission system operated by a regional transmission
7 organization.

8 * * *

9 "Forest reserve." Land, ten acres or more, stocked by forest
10 trees of any size and capable of producing timber or other wood
11 products. The term includes any land devoted to the development
12 and operation of an alternative energy system, if a majority of
13 the energy annually generated is utilized on the tract
14 production of an agricultural commodity or in activities
15 performed on the farmstead land.

16 * * *

17 "Tier I energy source." A Tier I alternative energy source,
18 as defined in section 2 of the act of November 30, 2004
19 (P.L.1672, No.213), known as the "Alternative Energy Portfolio
20 Standards Act."

21 * * *

22 ~~Section 2. Section 5 of the act is amended by adding a~~
23 ~~subsection to read:~~

24 ~~Section 5. Responsibilities of the County Assessor in~~
25 ~~General. * * *~~

26 ~~(b.1) Portions of land devoted to the development and~~
27 ~~operation of an alternative energy system meeting the definition~~
28 ~~of agricultural use, agricultural reserve or forest reserve~~
29 ~~shall retain the same land use category for preferential~~
30 ~~assessment as was approved for the land before the devotion took~~

1 ~~place.~~

2 ~~Section 3. Sections 6 and 8(b) of the act, amended December~~
3 ~~21, 1998 (P.L.1225, No.156), are amended to read:~~

4 ~~Section 6. Split off, Separation or Transfer; Other Use.~~

5 ~~(a.1) (1) The split off of a part of land which is subject to~~
6 ~~preferential assessment under this act shall subject the land so~~
7 ~~split off and the entire tract from which the land was split off~~
8 ~~to roll back taxes as set forth in section 5.1. The landowner~~
9 ~~changing the use of the land to one inconsistent with this act~~
10 ~~shall be liable for payment of roll back taxes. The landowner of~~
11 ~~land which continues to be eligible for preferential assessment~~
12 ~~shall not be liable for any roll back taxes triggered as a~~
13 ~~result of a change to an ineligible use by the owner of the~~
14 ~~split off tract. Roll back taxes under section 5.1 shall not be~~
15 ~~due if one of the following provisions applies:~~

16 ~~(i) The tract split off does not exceed two acres annually,~~
17 ~~except that a maximum of the minimum residential lot size~~
18 ~~requirement annually may be split off if the property is~~
19 ~~situated in a local government unit which requires a minimum~~
20 ~~residential lot size of two to three acres; the tract split off~~
21 ~~is used only for agricultural use, agricultural reserve or~~
22 ~~forest reserve or for the construction of a residential dwelling~~
23 ~~to be occupied by the person to whom the land is conveyed; and~~
24 ~~the total tract or tracts so split off do not exceed the lesser~~
25 ~~of ten acres or ten percent (10%) of the entire tract subject to~~
26 ~~preferential assessment.~~

27 ~~(ii) The split off occurs through a condemnation.~~

28 ~~(2) Each tract which has been split off under paragraph (1)~~
29 ~~(i) shall be subject to roll back taxes for such a period of~~
30 ~~time as provided in section 5.1. The landowner changing the use~~

~~of the land shall be liable for payment of roll back taxes.~~

~~(3) The split off of a tract of land which meets the provisions of paragraph (1) shall not invalidate the preferential assessment on any land retained by the landowner which continues to meet the provisions of section 3.~~

~~(4) Payment of roll back taxes by the liable landowner shall not invalidate the preferential assessment on any land which continues to meet the provisions of section 3.~~

~~(5) Any person may bring an action in equity to enjoin use of the land inconsistent with the use provided in this subsection.~~

~~(6) Land which has been split off shall be deemed to be used for residential use, agricultural use, agricultural reserve or forest reserve unless it is demonstrated that the owner of the split off parcel is actively using the tract in a manner which is inconsistent with residential use, agricultural use, agricultural reserve or forest reserve.~~

~~(a.2) The owner of land subject to preferential assessment may separate land. If a separation occurs, all tracts formed by the separation shall continue to receive preferential assessment unless, within seven years of the separation, there is a subsequent change of use to one inconsistent with the provisions of section 3. Such subsequent change in use shall subject the entire tract so separated to roll back taxes as set forth in section 5.1. The landowner changing the use of the land to one inconsistent with the provisions of section 3 shall be liable for payment of roll back taxes. After seven years from the date of the separation, only that portion of land which has had its use changed to one which is inconsistent with the provisions of section 3 shall be subject to roll back taxes as set forth in~~

~~section 5.1. Payment of roll back taxes shall not invalidate the preferential assessment on any land which continues to meet the provisions of section 3.~~

~~(a.3) If ownership of land subject to a single application for preferential assessment is transferred to another landowner, the land shall continue to receive preferential assessment, and no roll back taxes shall be due unless there is a subsequent change of use to one inconsistent with the provisions of section 3. The landowner changing the use of the land to one inconsistent with the provisions of section 3 shall be liable for payment of roll back taxes. Payment of roll back taxes shall not invalidate the preferential assessment on any land which continues to meet the provisions of section 3.~~

~~(b.1) The owner of property subject to preferential assessment may lease land covered by the preferential assessment to be used for wireless or cellular telecommunication when the following conditions are satisfied:~~

~~(1) The tract of land so leased does not exceed one half of an acre.~~

~~(2) The tract of land does not have more than one communication tower.~~

~~(3) The tract of land is accessible.~~

~~(4) The tract of land is not sold or subdivided. A lease of land shall not be considered a subdivision under this paragraph.~~

~~(b.2) Use of land under this section for wireless services other than wireless telecommunications may only qualify if such wireless services share a tower with a wireless telecommunications provider as provided for in subsection (b.1). Roll back taxes shall be imposed upon the tract of land leased by the landowner for wireless or cellular telecommunications~~

1 ~~purposes and the fair market value of that tract of land shall~~
2 ~~be adjusted accordingly. The lease of such a tract of land shall~~
3 ~~not invalidate the preferential assessment of the land which is~~
4 ~~not so leased, and such land shall continue to be eligible for~~
5 ~~preferential assessment if it continues to meet the requirements~~
6 ~~of section 3.~~

7 ~~(b.3) The wireless or cellular communications provider shall~~
8 ~~be solely responsible for obtaining required permits in~~
9 ~~connection with any construction on a tract of land which it~~
10 ~~leases pursuant to the provisions of this section for~~
11 ~~telecommunications purposes. No permit requested pursuant to~~
12 ~~this section shall be denied by a municipality for any reason~~
13 ~~other than failure to strictly comply with permit application~~
14 ~~procedures.~~

15 ~~(c.1) (1) Land subject to preferential assessment may be~~
16 ~~leased or otherwise devoted to the exploration for and removal~~
17 ~~of oil and gas, including the extraction of coal bed methane,~~
18 ~~and the development of appurtenant facilities, including, but~~
19 ~~not limited to, new roads and bridges, pipelines and other~~
20 ~~buildings or structures related to those activities.~~

21 ~~(2) Portions of land subject to preferential assessment may~~
22 ~~be used for exploration for or removal of oil and gas, including~~
23 ~~the extraction of coal bed methane, and the development of~~
24 ~~appurtenant facilities, including, but not limited to, new roads~~
25 ~~and bridges, pipelines and other buildings or structures related~~
26 ~~to those activities.~~

27 ~~(c.2) Roll back taxes shall be imposed upon those portions~~
28 ~~of the land actually devoted to the activities set forth in~~
29 ~~subsection (c.1)(2), excluding land devoted solely to subsurface~~
30 ~~transmission or gathering lines which shall not be subject to~~

~~roll back tax. The portion of land subject to roll back tax shall be the restored well site and any portion of land that does not meet the requirements of section 3, as measured upon the filing of a well site restoration report with the Department of Environmental Protection as required by 25 Pa. Code 78.65 (relating to site restoration) or its subsequent version. Within ten days of its approval, a copy of this report shall be furnished by the Department of Environmental Protection to the county board for assessment appeals. The fair market value of the restored well site and any land that does not meet the requirements of section 3 shall be adjusted to begin on the date of approval of a permit issued in accordance with the provisions of the act of December 19, 1984 (P.L.1140, No.223), known as the "Oil and Gas Act," and payable upon the filing of a well site restoration report. The use of a portion of land under subsection (c.1)(2) shall not invalidate the preferential assessment of the land which is not so used, and the land shall continue to receive preferential assessment if it continues to meet the requirements of section 3.~~

~~(c.3) Notwithstanding subsection (c.2), no roll back taxes shall be imposed upon a landowner for activities related to the exploration for and removal of oil and gas, including the extraction of coal bed methane, occurring after the effective date of this section if all of the following conditions are met:~~

~~(1) The activities are conducted exclusively by parties other than the landowner.~~

~~(2) The activities are conducted pursuant to an instrument, conveyance or other vesting of such rights occurring before the land received a preferential assessment under this act and before the effective date of this subsection.~~

~~(3) The activities are not conducted pursuant to a lease.~~

~~(c.4) The owner of property subject to preferential
assessment may lease or devote land covered by the preferential
assessment to be used for a wind power generation system.~~

~~(c.5) Roll back taxes shall be imposed upon those portions~~

SECTION 1.1. SECTION 5.1 OF THE ACT, ADDED DECEMBER 21, 1998
(P.L.1225, NO.156), IS AMENDED TO READ:

SECTION 5.1. PENALTY FOR INELIGIBLE USE.--IF A LANDOWNER
REMOVES LAND FROM A PREFERENTIAL ASSESSMENT UNDER SECTION 8.1,
IF A LANDOWNER CHANGES THE USE OF ANY TRACT OF LAND SUBJECT TO
PREFERENTIAL ASSESSMENT UNDER THIS ACT TO ONE WHICH IS
INCONSISTENT WITH THE PROVISIONS OF SECTION 3 OR IF FOR ANY
OTHER REASON THE LAND IS REMOVED FROM A LAND USE CATEGORY UNDER
SECTION 3, EXCEPT FOR A CONDEMNATION OF THE LAND, THE LAND SO
REMOVED AND THE ENTIRE TRACT OF WHICH IT WAS A PART SHALL BE
SUBJECT TO ROLL-BACK TAXES PLUS INTEREST ON EACH YEAR'S ROLL-
BACK TAX AT THE RATE OF SIX PERCENT (6%) PER ANNUM. AFTER THE
FIRST SEVEN YEARS OF PREFERENTIAL ASSESSMENT, THE ROLL-BACK TAX
SHALL APPLY TO THE SEVEN MOST RECENT TAX YEARS.

SECTION 2. SECTION 6 OF THE ACT IS AMENDED BY ADDING
SUBSECTIONS TO READ:

SECTION 6. SPLIT-OFF, SEPARATION OR TRANSFER.--* * *

(C.1) (RESERVED).

(C.2) THE FOLLOWING SHALL APPLY:

(1) PORTIONS OF LAND SUBJECT TO PREFERENTIAL ASSESSMENT MAY
BE LEASED OR OTHERWISE DEVOTED TO A WIND POWER GENERATION
SYSTEM.

(2) ROLL-BACK TAXES SHALL BE IMPOSED UPON THOSE PORTIONS of
the land actually devoted by the landowner for wind power
generation system purposes and the fair market value of those

portions of the land shall be adjusted accordingly. The wind power generation system shall include the foundation of the wind turbine and the area of the surface covered by appurtenant structures, including, but not limited to, new roads and bridges, transmission lines, substations and other buildings or structures related to the wind power generation system. Roll back taxes on those portions of the land shall not invalidate the preferential assessment of any other land covered by the preferential assessment and such land shall continue to be eligible for preferential assessment if it continues to meet the requirements of section 3.

(c.6) The owner of property subject to preferential assessment may lease or devote land covered by the preferential assessment to be used for small noncoal surface mining, as provided for under the act of December 19, 1984 (P.L.1093, No.219), known as the Noncoal Surface Mining Conservation and Reclamation Act. At any one time, a landowner may only have one active small noncoal surface mining permit as required under 25 Pa. Code § 77.108 (relating to permit for small noncoal operations) per application for preferential assessment.

(c.7) Roll back taxes shall be imposed upon those portions of land leased or devoted by the landowner for small noncoal surface mining, and the fair market value of those portions of the land shall be adjusted accordingly. Roll back taxes on those portions of the land shall not invalidate the preferential assessment of the land which is not so leased or devoted, and the land shall continue to be eligible for preferential assessment if it continues to meet the requirements of section 3.

(d) Upon the death of a landowner receiving preferential

~~assessment under this act, if land subject to preferential
assessment is divided among the beneficiaries designated as
class A for inheritance tax purposes and, as a result of such
division, one or more tracts no longer meet the provisions of
section 3, no roll back tax shall be due on any of the land
which previously qualified for preferential assessment. A
subsequent change in the use of one such beneficiary's portion
of the divided land shall not subject any other beneficiary's
portion of the divided land to roll back taxes. Roll back taxes
shall be due only in accordance with the provisions of section
5.1 on the tract held by the beneficiary who changes the use of
any portion of his or her inheritance.~~

~~(c) Any change in use of land subject to preferential
assessment shall be in compliance with the zoning ordinances of
the local municipality, if in effect.~~ THE UTILIZATION OF A
PORTION OF THE LAND FOR A WIND POWER GENERATION SYSTEM SHALL NOT
INVALIDATE THE PREFERENTIAL ASSESSMENT OF LAND WHICH IS NOT SO
UTILIZED, AND SUCH LAND SHALL CONTINUE TO RECEIVE PREFERENTIAL
ASSESSMENT IF IT CONTINUES TO MEET THE REQUIREMENTS OF SECTION
3. AN OWNER WHO IS SUBJECT TO ROLL-BACK TAXES UNDER THIS
SUBSECTION SHALL SUBMIT A NOTICE OF INSTALLATION OF A WIND POWER
GENERATION SYSTEM TO THE COUNTY ASSESSOR NO LATER THAN THIRTY
DAYS FOLLOWING THE COMMENCEMENT OF ELECTRICITY GENERATION AT THE
WIND POWER GENERATION SYSTEM.

SECTION 3. SECTION 8(B) OF THE ACT, AMENDED DECEMBER 21,
1998 (P.L.1225, NO.156), IS AMENDED TO READ:

Section 8. Roll-Back Taxes; Special Circumstances.--

(b) Unpaid roll-back taxes shall be a lien upon the property
collectible in the manner provided by law for the collection of
delinquent taxes. Roll-back taxes shall become due on the date



1 of change of use, ~~or when a well site restoration report is~~
2 ~~filed under section 6(c.2),~~ OR WITH REGARD TO A WIND POWER
3 GENERATION SYSTEM UNDER SECTION 6(C.2), ON THE DATE THE NOTICE
4 OF THE INSTALLATION OF THE SYSTEM IS RECEIVED BY THE COUNTY
5 ASSESSOR, or any other termination of preferential assessment
6 and shall be paid by the owner of the land at the time of change
7 in use, or any other termination of preferential assessment, to
8 the county treasurer or to the tax claim bureau, as the case may
9 be, whose responsibility it shall be to make proper distribution
10 of the taxes to the taxing bodies wherein the property is
11 located. Nothing in this section shall be construed to require
12 the taxing body of a taxing district in which land enrolled in
13 preferential use is situated to accept the roll-back taxes due
14 and payable to that taxing district if the use of the land is
15 changed for the purpose of granting or donating such land to:
16 (1) a school district;
17 (2) a municipality;
18 (3) a county;
19 (4) a volunteer fire company;
20 (5) a volunteer ambulance service;
21 (6) a not-for-profit corporation, tax exempt under section
22 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3, 26
23 U.S.C. § 501(c)(3)), provided that, prior to accepting ownership
24 of the land, such corporation enters into an agreement with the
25 municipality wherein the subject land is located guaranteeing
26 that it will be used exclusively for recreational purposes, all
27 of which shall be available to the general public free of
28 charge. In the event the corporation changes the use of all or a
29 portion of the land or charges admission or any other fee for
30 the use or enjoyment of the facilities, the corporation shall

1 immediately become liable for all roll-back taxes and accrued
2 interest previously forgiven pursuant hereto; or

3 (7) a religious organization for construction or regular use
4 as a church, synagogue or other place of worship, including
5 meeting facilities, parking facilities, housing facilities and
6 other facilities which further the religious purposes of the
7 organization.

8 * * *

9 Section 4. The act is amended by adding a section to read:

10 Section 8.1. Removal of Land From Preferential Assessment.--

11 (a) A landowner receiving preferential assessment under this
12 act may remove land from preferential assessment if:

13 (1) the landowner notifies in writing the county assessor by
14 June 1 of the year immediately preceding the tax year for which
15 the removal is requested;

16 (2) the entire tract or tracts enrolled on a single
17 application for preferential assessment is removed from
18 preferential assessment; and

19 (3) the landowner pays rollback taxes on the entire tract or
20 tracts as provided for in section 5.1.

21 (b) Land removed from preferential assessment under this
22 section shall not be eligible to be subsequently reenrolled in
23 preferential assessment by the same landowner.

24 (C) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT A ←
25 LANDOWNER WHOSE LAND WAS TERMINATED FROM PREFERENTIAL ASSESSMENT
26 UNDER OTHER SECTIONS OF THIS ACT FROM REENROLLING THE LAND IN
27 PREFERENTIAL ASSESSMENT.

28 Section 5. This act shall take effect ~~as follows:~~ ←

29 ~~(1) The addition of section 8.1 of the act shall take~~
30 ~~effect in 60 days.~~

1 ~~(2) The remainder of this act shall take effect~~
2 immediately.