

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 899 Session of 2011

INTRODUCED BY McILHINNEY, WAUGH, FOLMER, GREENLEAF, MENSCH,
M. WHITE AND BRUBAKER, MARCH 25, 2011

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, MARCH 25, 2011

AN ACT

1 Providing for authorization of development and operation of
2 facilities to improve cost-efficiency in agricultural
3 production or support agricultural marketing or agritourism
4 enterprises on farms and for the establishment of minimum
5 standards for land development and for construction of
6 buildings that support agricultural cost-improvement
7 activities and are used in agricultural marketing and
8 agritourism enterprises; establishing the Farm Enterprise
9 Standards Board and providing for its powers and duties;
10 imposing limitations in local governmental authority;
11 providing for State preemption; and making related repeals.

12 The General Assembly finds and declares that the purpose of
13 this act is to:

14 (1) Facilitate and encourage the engagement of on-farm
15 activities and enterprises that increase the cost-efficiency
16 of agricultural production, increase the value and
17 profitability of the farm's agricultural products and provide
18 additional and supplemental income to farm operations.

19 (2) Identify enterprises and related land improvement
20 activities and facilities that will likely improve cost-
21 efficiency in agricultural production and facilitate
22 agricultural marketing and agritourism on farms.

1 (3) Identify and develop uniform standards that will
2 especially apply to land improvement activities and the
3 construction and use of buildings and structures supporting
4 agricultural production and supporting agricultural marketing
5 and agritourism enterprises authorized and encouraged under
6 this act.

7 (4) Relieve farm families who meet the standards
8 established for land improvement and construction and use of
9 buildings and structures supporting agricultural production,
10 agricultural marketing and agritourism enterprises and
11 activities from zoning, land development and construction
12 standards, requirements and restrictions that would otherwise
13 be imposed by local governments.

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

16 Section 1. Short title.

17 This act shall be known and may be cited as the Family Farm
18 Initiative And Enterprise Land Development Act.

19 Section 2. Definitions.

20 The following words and phrases when used in this act shall
21 have the meanings given to them in this section, unless the
22 context clearly indicates otherwise.

23 "Agricultural marketing enterprise." An enterprise engaged
24 in by a farmer for the purpose of directly marketing
25 agricultural products produced by the farmer in their natural or
26 manufactured state. The term shall include any on-farm
27 processing, packaging or other activity performed in the course
28 of direct marketing of the farmer's agricultural products. An
29 enterprise that directly markets 30% of the total value of
30 agricultural products grown on a farm for commercial sale shall

1 be considered an agricultural marketing enterprise,
2 notwithstanding that items other than the farmer's agricultural
3 products are marketed or that the enterprise is operated during
4 periods other than periods where the farmer's agricultural
5 products are normally produced.

6 "Agritourism enterprise." Any of the following:

7 (1) An enterprise that provides entertainment or
8 education on a farm to tourists and other patrons in the
9 promotion of farming or rural lifestyle or the promotion of
10 agricultural products, including farm enterprises that:

11 (i) Provide for participation of patrons in farming
12 or harvesting activities.

13 (ii) Allow patrons to interact with farm or rural
14 animals or allow patrons to interact with agricultural
15 products normally produced on the farm.

16 (iii) Promote the farm or products produced on the
17 farm through tours, sampling and tasting of products or
18 souvenir sales.

19 (iv) Provide bed and breakfast accommodations or
20 similar farm lodging to patrons as part of the engagement
21 in farming or harvesting activities or to acquaint
22 patrons with the farm's agricultural character or
23 aesthetic nature.

24 (v) Provide pastoral or family dining.

25 (vi) Provide games, rides and other entertainment
26 activities normally engaged in by farm families or rural
27 communities.

28 (vii) Engage in activities in conjunction with local
29 seasonal festivals to promote the local availability of
30 agricultural products.

1 (2) An enterprise in equine activity.

2 (3) An enterprise in agritainment, as defined in section
3 2 of the act of December 19, 1974 (P.L.973, No.319), known as
4 the Pennsylvania Farmland and Forest Land Assessment Act of
5 1974.

6 (4) Any other enterprise determined to be an agritourism
7 enterprise by the board.

8 "Board." The Farm Enterprise Standards Board.

9 "Department." The Department of Agriculture of the
10 Commonwealth.

11 "Equine activity." Any commercial equine activity, as
12 defined in section 3 of the act of June 30, 1981 (P.L.128,
13 No.43), known as the Agricultural Area Security Law.

14 "Land development." As defined in section 7 of the act of
15 July 31, 1968 (P.L.805, No.247), known as the Pennsylvania
16 Municipalities Planning Code.

17 "Municipality." Any county, borough, township or town. The
18 term includes any county, borough, township or town created
19 under home rule or other means authorized by statute.

20 "Secretary." The Secretary of Agriculture of the
21 Commonwealth.

22 "Structure." As defined in section 7 of the act of July 31,
23 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities
24 Planning Code.

25 "Supporting agricultural structure." Any structure
26 constructed for the purpose of storing farm implements or
27 machinery, farm supplies or agricultural products. The term
28 includes any structure constructed for the purpose of production
29 of mushrooms or other horticultural products.

30 Section 3. Farm Enterprise Standards Board.

1 (a) Establishment.--The Farm Enterprise Standards Board is
2 established within the department.

3 (b) Membership.--The board shall consist of the following
4 members:

5 (1) The secretary or a designee, who shall serve as
6 board chairman.

7 (2) Two active farmers appointed by the Governor who are
8 engaged or who have experience in operation of an
9 agricultural marketing or agritourism enterprise. Each
10 appointee shall be made from a list of persons nominated by
11 all of the following:

12 (i) The Pennsylvania Farm Bureau.

13 (ii) The Pennsylvania Association for Sustainable
14 Agriculture.

15 (3) Two architects or building contractors, each
16 appointed by the President pro tempore of the Senate and the
17 Speaker of the House of Representatives, who have experience
18 in the design or construction of supporting agricultural
19 buildings or buildings commonly used in agricultural
20 marketing and agritourism enterprises.

21 (4) One municipal official appointed by the Minority
22 Leader of the Senate who is responsible for enforcement of
23 building or land development standards.

24 (5) One member of the public appointed by the Minority
25 Leader of the House of Representatives.

26 (c) Term.--Members of the board shall be appointed to four-
27 year terms, except that the initial terms for the legislative
28 appointees shall be two years.

29 (d) Meetings.--At least four members of the board shall
30 constitute a quorum for the purpose of conducting business. A

1 majority of those present and voting shall have authority to act
2 upon any matter. Each member of the board may participate in
3 meetings and shall be considered to be present at meetings as
4 authorized by law. The board is authorized to establish rules
5 governing the operation of meetings and procedures for
6 administration of this act. A board member who is absent without
7 reasonable justification for three consecutive meetings may be
8 removed by action of the board.

9 (e) Compensation and expenses.--Persons appointed to the
10 board shall serve without compensation, but shall be reimbursed
11 for reasonable expenses incurred in the performance of their
12 duties.

13 (f) Vacancies.--A vacancy occurring during the term of any
14 board member shall be filled for the unexpired term by a
15 successor appointed in the same manner as the member.

16 (g) Powers and duties.--

17 (1) General.--The board shall have the following powers
18 and duties:

19 (i) To identify supporting agricultural structures
20 and agricultural marketing and agritourism enterprises
21 that will be authorized to be constructed or performed on
22 farms.

23 (ii) To establish minimum standards for land
24 development, construction of buildings and structures and
25 operation that will apply to supporting agricultural
26 structures and to agricultural marketing or agritourism
27 enterprises on farms identified under subparagraph (i).

28 (iii) Upon a request for review in accordance with
29 section 4, to determine whether the design, land
30 development or construction of supporting agricultural

1 production facilities or facilities related to an
2 agricultural marketing or agritourism enterprise meets
3 the minimum standards established by the board.

4 (2) In establishing the minimum standards under
5 paragraph (1)(i), the board shall consider the following:

6 (i) Minimum standards and requirements of
7 construction or operation that may be applicable to
8 supporting agricultural structures or agricultural
9 marketing or agritourism enterprises under Federal law.

10 (ii) Measures for effective control of adverse
11 environmental impacts likely to occur from land
12 development, construction or operation of supporting
13 agricultural structures or agricultural marketing or
14 agritourism enterprise facilities.

15 (iii) Measures for effective control and management
16 of erosion and sedimentation, sewage and storm water
17 runoff from land development, construction and operation
18 of supporting agricultural structures or agricultural
19 marketing or agritourism enterprise facilities.

20 (iv) Measures to ensure effective health and safety
21 protection of agricultural marketing or agritourism
22 enterprise areas and facilities that patrons will likely
23 come into contact with or occupy.

24 (v) Principles for management of agricultural
25 marketing and agritourism enterprises on farms in a
26 manner and scale that will not seriously diminish the
27 farm's principal character and use as a farm.

28 (vi) The practical and economic feasibility of
29 typical farm families in this Commonwealth to attain the
30 standards established.

(h) Administrative and clerical support.--The department shall provide the board with sufficient staff, office space, equipment and other administrative and clerical support as will allow the board to fully carry out the powers and duties prescribed under this act.

Section 4. Review and determination of compliance with minimum standards.

(a) Request for review.--Any person owning or operating a farm who constructs or plans to construct a supporting agricultural structure or who engages or plans to engage in an agricultural marketing or agritourism enterprise may submit to the board an application for review to determine whether the structure or enterprise meets the minimum standards established by the board. The application shall be submitted in writing in a form and manner prescribed by the board.

(b) Notice.--Within 30 days of receiving the application, the board shall provide to the applicant, by regular mail, a notice of receipt of the application and shall transmit for publication a notice of receipt of the application in the Pennsylvania Bulletin and in the appropriate newspaper of general circulation.

(c) Procedures for review and determination.--Reviews and determinations made by the board shall be subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

(d) Notice of determination.--In addition to the requirements for issuance and notice of determination prescribed by law, the board shall, upon issuance of determination, transmit for publication in the Pennsylvania Bulletin a notice that sufficiently identifies the application for which the

1 determination is issued and that the determination made.

2 (e) Appeals.--Any person aggrieved by a determination made
3 by the board may appeal the determination by filing an appeal
4 within 30 days of the date the determination is published in the
5 Pennsylvania Bulletin. Any appeals made under this subsection
6 shall be subject to the provisions of 2 Pa.C.S. Ch 7. Subch. A
7 (relating to judicial review of Commonwealth agency action).

8 Section 5. Enterprises meeting minimum standards authorized.

9 Land development, construction or operation of any supporting
10 agricultural structure or any facility related to an
11 agricultural marketing or agritourism enterprise performed in
12 accordance with the minimum standards established under this act
13 shall be authorized absolutely, notwithstanding any municipal
14 ordinance, public nuisance or zoning prohibitions to the
15 contrary.

16 Section 6. Effect of establishment of minimum standards on
17 other laws.

18 This act may not be interpreted with other law in a manner
19 that will impose any additional requirement or restriction upon
20 supporting agricultural structures and facilities for which
21 standards have been established under this act.

22 Section 7. Effect of municipal ordinances and actions in
23 contravention of this act.

24 Any enactment or enforcement of a municipal ordinance that
25 prohibits, restricts or places additional requirements on land
26 development, construction or operation of a supporting
27 agricultural structure or agricultural marketing or agritourism
28 enterprise which meets the minimum standards established under
29 this act shall be deemed to be an unauthorized local ordinance
30 for purposes of 3 Pa.C.S. Ch. 3 (relating to local regulation)

1 and shall be subject to the rights of legal action and other
2 rights and remedies prescribed in 3 Pa.C.S. Ch. 3. The rights
3 and remedies authorized under this section shall be in addition
4 to any other legal or equitable rights or remedies that may be
5 authorized by law. Any person aggrieved by the enactment or
6 enforcement of a municipal ordinance in contravention of this
7 act shall not be required to exhaust legal or administrative
8 remedies that may be prescribed under other laws.

9 Section 8. State preemption.

10 This act and its provisions are of Statewide concern and
11 occupy the whole field of regulation related to land
12 development, construction and engagement and operation of
13 supporting agricultural structures and facilities related to
14 agricultural marketing and agritourism enterprises. No ordinance
15 or regulation of any municipality may prohibit or attempt to
16 regulate any matter relating to land development, construction
17 or operation of supporting agricultural structures or
18 agricultural marketing or agritourism enterprises in a manner
19 that conflicts with this act.

20 Section 9. Interpretation of act.

21 This act shall be liberally construed to effectuate its
22 purposes.

23 Section 10. Retroactivity.

24 This act shall apply retroactively to any municipal ordinance
25 or regulation in effect on the effective date of this section.

26 Section 11. Repeals.

27 (a) Specified acts.--The following acts or parts of acts are
28 repealed to the extent they conflict with this act:

29 (1) The act of June 24, 1931 (P.L.1206, No.331), known
30 as The First Class Township Code.

1 (2) The act of May 1, 1933 (P.L.103, No.69), known as
2 The Second Class Township Code.

3 (3) The act of August 9, 1955 (P.L.323, No.130), known
4 as The County Code.

5 (4) The act of January 24, 1966 (1965 P.L.1535, No.537),
6 known as the Pennsylvania Sewage Facilities Act.

7 (5) The act of February 1, 1966 (1965 P.L.1656, No.581),
8 known as The Borough Code.

9 (6) The act of July 31, 1968 (P.L.805, No.247), known as
10 the Pennsylvania Municipalities Planning Code.

11 (7) The act of October 4, 1978 (P.L.864, No.167), known
12 as the Storm Water Management Act.

13 (8) The act of November 10, 1999 (P.L.491, No.45), known
14 as the Pennsylvania Construction Code Act.

15 (b) Other acts.--Any other act or part of act is repealed to
16 the extent it is in conflict with this act.

17 Section 20. Effective date.

18 This act shall take effect in 60 days.