

No. 1981-43

AN ACT

HB 143

Authorizing the creation of agricultural areas.

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

Section 1. Short title.

This act shall be known and may be cited as the "Agricultural Area Security Law."

Section 2. Statement of legislative findings.

It is the declared policy of the Commonwealth to conserve and protect and to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. It is also the declared policy of the Commonwealth to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air, as well as for aesthetic purposes. Article VIII, section 2 of the Constitution of Pennsylvania provides that the General Assembly may, by law, establish standards and qualifications for agricultural reserves. Agriculture in many parts of the Commonwealth is under urban pressure from expanding metropolitan areas. This urban pressure takes the form of scattered development in wide belts around urban areas, and brings conflicting land uses into juxtaposition, creates high costs for public services, and stimulates land speculation. When this scattered development extends into good farm areas, ordinances inhibiting farming tend to follow, farm taxes rise, and

hopes for speculative gains discourage investments in farm improvements. Many of the agricultural lands in the Commonwealth are in jeopardy of being lost for any agricultural purposes. Certain of these lands constitute unique and irreplaceable land resources of Statewide importance. It is the purpose of this act to provide a means by which agricultural land may be protected and enhanced as a viable segment of the Commonwealth's economy and as an economic and environmental resource of major importance.

Section 3. Definitions.

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

"Advisory committee." An Agricultural Area Advisory Committee.

"Agricultural area." A unit of 500 or more acres of land used for the agricultural production of crops, livestock and livestock products under the ownership of one or more persons.

"Agricultural production." The production for commercial purposes of crops, livestock and livestock products, but not land or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products.

"Board." The Agricultural Lands Condemnation Approval Board.

"County governing body." The county board of commissioners or other designated council of representatives under home rule charters.

"Crops, livestock and livestock products." Include but are not limited to:

(1) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.

(2) Fruits, including apples, peaches, grapes, cherries and berries.

(3) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.

(4) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees and flowers.

(5) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

(6) Timber, wood and other wood products derived from trees.

"Development easement." An interest in land, less than fee simple title, which interest represents the inchoate right to develop such lands for residential, commercial, recreational or industrial uses. This right shall become absolute when the owner of a development easement either owns the land to which the easement belongs or has a written agreement with the owner of the land to use the development easement on the land: Provided, however, That the use of the development easement is in compliance with all local zoning ordinances.

"Governing body." The governing body of a local government unit.

"Local government unit." Any city, borough, township or town.

"Normal farming operations." The customary and generally accepted activities, practices, and procedures that farmers adopt, use, or

engage in year after year in the production and preparation for market of poultry, livestock, and their products and in the production and harvesting of agricultural, agronomic, horticultural, silvicultural, and aquicultural crops and commodities.

“Planning commission.” A local government planning commission.

“Viable agricultural land.” Land suitable for agricultural production and which will continue to be economically feasible for such use if real estate taxes, farm use restrictions, and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

Section 4. Agricultural Area Advisory Committee.

The governing body of any local government may establish an Agricultural Area Advisory Committee which shall consist of three active farmers, each representing a different private or corporate farm, and one citizen residing within the unit of local government and one member of the governing body of such local government, who shall serve as the chairman of the committee. Such a committee shall be established when a proposal is received by the governing body for the creation of an agricultural area. Pursuant to this act the members of such committee shall be appointed by and shall serve at the pleasure of the chairman of the governing body. The members shall serve without salary, but the governing body may entitle each such member to reimbursement for his actual and necessary expenses incurred in the performance of his official duties. Such committee shall advise the governing body and work with the planning commission in relation to the proposed establishment, modification, and termination of agricultural areas. In particular, the committee shall render expert advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within the proposed area and the relation of farming in such area to the local government unit as a whole.

Section 5. Agricultural areas.

(a) Proposals for creation.—Any owner or owners of land may submit a proposal to the governing body for the creation of an agricultural area within such local government unit, provided that such owner or owners own at least 500 acres of viable agricultural land proposed to be included in the area. The proposed area may also consist of two or more noncontiguous parcels or areas: Provided, however, That the governing body may limit the minimum acreage requirements in noncontiguous parcels in an agricultural area: And, provided further, That no minimum acreage requirement shall be more than 50 acres. Such proposal shall be submitted in such manner and form as may be prescribed by the governing body of the local government unit wherein the proposed area is situated and shall include a description of the proposed area, including the boundaries thereof. If the proposed area is situated in more than one local government unit, the proposal shall be submitted to the governing bodies of all local government units affected.

(b) Notice.—Upon the receipt of such a proposal, the governing body shall thereupon provide notice of such proposal by publishing a notice in a newspaper having general circulation within the proposed area and by posting such notice in five conspicuous places within, adjacent or near to the proposed area. The notice shall contain the following information:

(1) A statement that a proposal for an agricultural area has been filed with the governing body pursuant to this act.

(2) A statement that the proposal will be on file open to public inspection in the office of the local government unit.

(3) A statement that any municipality whose territory encompasses the proposed area, or any landowner who owns the land proposed to be included within the proposed area, or any landowner with lands adjacent or near to the proposed area who wishes such lands to be included or not included therein, may propose modifications of the proposed area in such form and manner as may be prescribed by the governing body.

(4) A statement that any proposed modification must be filed with the governing body and the planning commission within 30 days after the publication of such notice.

(5) A statement that at the termination of the 30-day period, the proposal and proposed modifications will be submitted to the planning commission and the advisory committee, and that thereafter a public hearing will be held on the proposal, proposed modifications and recommendations of the planning commission and advisory committee.

(c) Modification proposals.—The governing body shall receive any proposals for modifications of such proposal which may be submitted by such landowners or municipalities within 30 days after the publication of such notice.

(d) Report by planning commission.—The governing body shall, upon the termination of such 30-day period, refer such proposal and proposed modifications to the planning commission, which shall, within 45 days, report to the governing body the potential effect of such proposal and proposed modifications upon the local government's planning policies and objectives.

(e) Referral to advisory committee.—The governing body shall also, upon the termination of such 30-day period, refer such proposal and proposed modifications to the Agricultural Area Advisory Committee, which shall, within 45 days report to the governing body its recommendations concerning the proposal and proposed modifications.

Section 6. Public hearings.

(a) Hearings.—The governing body, shall upon receipt of the reports from the advisory committee and the planning commission, hold a public hearing relative to the proposed agricultural area.

(b) Place of hearing.—The hearing shall be held at a place within the proposed area or otherwise readily accessible to the proposed area.

(c) Notice of hearing.—A hearing notice shall be published in a newspaper having a general circulation within the proposed area and shall be given in writing to those municipalities whose territory encompasses the proposed area and any proposed modifications and to those landowners who proposed modifications pursuant to section 5(c), and by posting such notice in five conspicuous places within, adjacent or near to the proposed area. Such notice shall contain the following information:

- (1) A statement of the time, date and place of the public hearing.
- (2) A description of the proposed area, any proposed additions or deletions and any recommendations of the planning commission or advisory committee.
- (3) A statement that the public hearing will be held concerning:
 - (i) The original proposal.
 - (ii) Any written amendments proposed during the 30-day review period.
 - (iii) Any recommendations proposed by the Agricultural Area Advisory Committee and the planning commission.

Section 7. Evaluation criteria.

(a) Factors to be considered.—The following factors shall be considered by the planning commission, advisory committee, and at any public hearing:

- (1) The viability of active farming within the proposed area and in areas near or adjacent thereto.
- (2) The presence of any viable farm lands within the proposed area and adjacent thereto that are not now in active farming.
- (3) The nature and extent of land uses other than active farming within the proposed area and near or adjacent thereto.
- (4) Local government unit developmental patterns and needs.
- (5) The local government unit's comprehensive plan.
- (6) Any other matter which may be relevant.

(b) Other factors.—In judging viability the following factors shall be considered:

- (1) Soil.
- (2) Climate.
- (3) Topography.
- (4) Markets for farm products.
- (5) The extent and nature of farm improvements.
- (6) The present status of farming.
- (7) Anticipated trends in agricultural economic conditions and technology.
- (8) Any other natural or economic factors as may be relevant.

(c) Resource materials.—In considering the viability factors as set forth in this section, various resource materials shall be used, including, but not limited to, the following:

- (1) Soil surveys of the Pennsylvania State University.
- (2) Soil surveys and other information provided by the National Cooperative Soil Survey.
- (3) Soil survey maps prepared by the United States Soil Conservation Service.
- (4) The United States census of agricultural categories of land use classes.
- (5) Agricultural viability maps prepared by the Department of Agriculture.
- (6) Any other relevant published data, maps, charts, or results of soil or land use surveys made by any State or Federal agency.

Section 8. Decision on proposed area.

(a) **Action by governing body.**—The governing body, after receiving the reports of the planning commission and the advisory committee, and after such public hearing, may adopt the proposal or any modification of the proposal they deem appropriate, including the inclusion, to the extent feasible, of adjacent viable farm lands, and, the exclusion, to the extent feasible, of nonviable farm land and nonfarm land. The existence of utility facilities on the proposed area shall not prevent the designation of the area as “agricultural” nor shall the rights of utilities with respect to the existing facilities be disturbed or affected by such designation. The governing body shall act to adopt or reject the proposal, or any modification of it, no later than 180 days from the date the proposal was originally submitted.

(b) **Effective date of creation of area.**—The proposed area, shall become effective upon the adoption of same by the governing body.

(c) **Filing of area description.**—Upon the creation of an agricultural area, a description thereof shall be filed by the governing body with the recorder of deeds and with the planning commission.

(d) **Participation.**—Participation in the agricultural area shall be available at its creation to landowners within the jurisdiction of the governing body including those not among the original petitioners on a voluntary basis. The addition or deletion of land in the agricultural area shall only occur after seven years or whenever the agricultural area is subject to review by the local governing body.

Section 9. Review of area.

(a) **Review by governing body.**—The governing body shall review any area created under this section seven years after the date of its creation and every seven years thereafter. In conducting such review, the governing body shall ask for the recommendations of the planning commission, the county planning commission and the advisory committee, and shall, at least 120 days prior to the end of the seventh year and not more than 180 days prior to such date, hold a public hearing at a place within the area or otherwise readily accessible to the area upon notice in a newspaper having a general circulation within the area by posting in five conspicuous places within, adjacent or near the area and by individual notice, in writing, to those municipalities whose territories

encompass the area and the person owning land within the area. The governing body after receiving the reports of the planning commission, the county planning commission and the advisory committee and after the public hearing, may terminate the area at the end of such seven-year period by filing a notice of termination with the recorder of deeds and with the planning commission or may modify the area in the same manner as is provided in this act for the creation of areas. If the governing body does not act, or if a modification of an area is rejected, the area shall continue as originally constituted.

(b) **Landowner withdrawal.**—Landowners who wish their land to be withdrawn or included in the agricultural area shall notify the local governing unit of their intent at least 120 days before the end of the seventh year.

Section 10. Appeals.

Any party in interest aggrieved by a decision or action of the governing body relating to the creation, composition, modification, rejection or termination of an agricultural area may take an appeal to the court of common pleas, in the manner provided by law within 30 days after such decision or action.

Section 11. Limitation on local regulations.

(a) **General rule.**—Every municipality or political subdivision creating an agricultural area shall encourage the continuity, development and viability of agriculture within such an area by not enacting local laws or ordinances within such an area in a manner which would unreasonably restrict farm structures or farm practices in contravention of the purposes of this act unless such restrictions or regulations bear a direct relationship to the public health or safety.

(b) **Public nuisance.**—Any municipal or political subdivision law or ordinance defining or prohibiting a public nuisance shall exclude from the definition of such nuisance any agricultural activity or operation conducted using normal farming operations within an agricultural area as permitted by this act if such agricultural activity or operation does not bear a direct relationship to the public health and safety.

Section 12. Policy of Commonwealth agencies.

It shall be the policy of all Commonwealth agencies to encourage the maintenance of viable farming in agricultural areas and their administrative regulations and procedures shall be modified to this end insofar as is consistent with the promotion of public health and safety, with the provisions of any Federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of Federal agencies, including provisions applicable only to obtaining Federal grants, loans, or other funding.

Section 13. Limitation on exercise of eminent domain.

(a) **Approval required for condemnation by an agency of the Commonwealth.**—No agency of the Commonwealth having or exercising powers of eminent domain shall condemn for any purpose any land within any agricultural area which land is being used for productive

agricultural purposes (not including the growing of timber) unless prior approval has been obtained in accordance with the criteria and procedures established in this section from the Agricultural Lands Condemnation Approval Board as established in section 306 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929." The condemnation approval specified by this subsection shall not be required for an underground public utility facility or for any facility of an electric cooperative corporation or for any public utility facility the necessity for and the propriety and environmental effects of which has been reviewed and ratified or approved by the Pennsylvania Public Utility Commission or the Federal Energy Regulatory Commission.

(b) Approval required for condemnation by a political subdivision, authority, public utility or other body.—No political subdivision, authority, public utility or other body having or exercising powers of eminent domain shall condemn any land within any agricultural area for any purpose, unless prior approval has been obtained from Agricultural Lands Condemnation Approval Board and from each of the following bodies: the governing bodies of the municipalities encompassing the agricultural area, the county commissioners, and the Agricultural Area Advisory Committee. Review by the board and the other indicated bodies shall be in accordance with the criteria and procedures established in this section. The condemnation approvals specified by this subsection shall not be required for an underground public utility facility or for any facility of an electric cooperative corporation or for any public utility facility the necessity for and the propriety and environmental effects of which has been reviewed and ratified or approved by the Pennsylvania Public Utility Commission or the Federal Energy Regulatory Commission, regardless of whether the right to establish and maintain such underground or other public utility facility is obtained by condemnation, or by agreement with the owner.

(c) Notice.—Any condemner wishing to condemn property the approval for which is required under this section shall at least 30 days prior to taking such action notify each of the foregoing bodies that such action is contemplated, and no such condemnation shall be effective until 60 days following the receipt of such notice.

(d) Review by Agricultural Lands Condemnation Approval Board and other bodies.

(1) Upon receipt of such notice the board provided for in subsection (a) or the bodies provided for in subsection (b) jointly or separately shall review the proposed condemnation in accordance with the applicable criteria established in paragraph (2).

(2) (i) In the case of condemnation for highway purposes (but not including activities relating to existing highways such as, but not limited to, widening roadways, the elimination of curves or reconstruction, for which no approval is required) and in the case of condemnation for the disposal of solid or liquid waste material, the board or other appropriate reviewing body shall approve the

proposed condemnation only if it determines there is no reasonable and prudent alternative to the utilization of the land within the agricultural area for the project.

(ii) In all other cases not otherwise specifically provided for, the board or other appropriate reviewing body shall approve the proposed condemnation only if it determines that:

(A) the proposed condemnation would not have an unreasonably adverse affect upon the preservation and enhancement of agriculture or municipal resources within the area or upon the environmental and comprehensive plans of the county, municipality and the Commonwealth, or upon the goals, resource plans, policies or objectives thereof; or

(B) there is no reasonable and prudent alternative to the utilization of the lands within the agricultural area for the project.

(e) Public hearings.—Within such 60-day period the Agricultural Lands Condemnation Board and other indicated bodies, as appropriate, shall hold a public hearing concerning the proposed condemnation at a place within or otherwise readily accessible to the area. Timely notice of such hearing shall be placed in a newspaper having a general circulation within the area and a written notice shall be posted at five conspicuous places within or adjacent to the area. Individual written notice shall also be given to all municipalities encompassing all or part of the area, to the proposed condemnor, and to the owners of the land proposed to be condemned.

(f) Findings and decisions.—The Agricultural Lands Condemnation Approval Board and other indicated bodies, as appropriate, shall render findings and decisions on or before the expiration of such 60-day period and likewise within such period shall report the same to the proposed condemnor, the municipalities affected and any party who shall file an appearance at such hearing. If the board or any other indicated body fails to act within the 60-day period, the condemnation shall be deemed approved.

(g) Injunctions.—The Agricultural Lands Condemnation Approval Board may request the Attorney General or the bodies may request their solicitor to bring an action to enjoin any such condemnor from violating any of the provisions of this section.

(h) Emergencies excepted.—This section shall not apply to any emergency project which is immediately necessary for the protection of life or property.

Section 14. Purchase of development easement in agricultural areas.

(a) Program to purchase easements.—After the establishment of an agricultural area by the governing body, the county governing body may authorize a program to purchase the development easements for land within an agricultural area. The program shall be administered by the county planning commission and a farmer member from each Agricultural Area Advisory Committee within the county.

(b) Funds for purchases.—The county governing body may use moneys from its general fund and/or incur debt to make available moneys to purchase the development easements in agricultural areas. The incurring of debt by the county governing body shall be consistent with all present laws and procedures imposed on counties for such action.

(c) Offers.—Agents, employees or officials of the county planning commission shall be responsible to make such offers and to enter into such negotiations as are necessary with any owner of lands in an agricultural area, in order to purchase any development easements. Nothing in this act shall be construed as to require any owner of land in an agricultural area to sell or transfer any development easements thereto. An owner may reject any offer by any official of the county planning commission to purchase any development easements. The price for the purchase of development easements shall be mutually agreed to by the owner of the land affected and the county governing body. All such contracts for purchase shall be in writing.

(d) Sale of land.—A county governing body may sell any of its acquired development easements as those easements are defined under this act: Provided, That the local governing body, which has jurisdiction over the effected land, approves the sale by a majority vote of its members: And, further provided, That the present owner of the land affected has refused to purchase such development easement.

Section 15. Rules and regulations.

The Secretary of the Department of Agriculture shall promulgate rules and regulations necessary to promote the efficient, uniform and State-wide administration of the act.

Section 16. Effective date.

This act shall take effect in 60 days.

APPROVED—The 30th day of June, A. D. 1981.

DICK THORNBURGH