

No. 2006-46

AN ACT

SB 723

Amending the act of June 30, 1981 (P.L. 128, No. 43), entitled "An act authorizing the creation of agricultural areas," further providing for statement of legislative findings, for definitions, for limitation on certain governmental actions, for purchase of agricultural conservation easements, for the Agricultural Conservation Easement Purchase Fund, for legislative report and for the Land Trust Reimbursement Program; providing for acquisitions by donation; and abrogating a regulation.

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

Section 1. Section 2 of the act of June 30, 1981 (P.L. 128, No. 43), known as the Agricultural Area Security Law, is amended by adding a paragraph to read:

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 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.

It is further the purpose of this act to:

* * *

(6) Encourage financial partnerships between State and local governments with nonprofit entities in order to increase the funds available for agricultural conservation easement purchases.

Section 2. Section 3 of the act is amended by adding a definition to read:
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:

* * *

“Eligible nonprofit entity.” *An entity that provides the State board or an eligible county satisfactory proof of all of the following:*

(1) That the entity is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)).

(2) That the entity has experience acquiring, whether through purchase, donation or other transfer, an agricultural or other conservation easement.

* * *

Section 3. Section 13(a) and (b) of the act, amended December 14, 1988 (P.L.1202, No.149), are amended to read:

Section 13. Limitation on certain governmental actions.

(a) Approval required for condemnation and for certain other actions 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 security 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 ***that does not permanently impact the tilling of soil*** 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. In addition, all State-funded development projects which might affect land in established agricultural security areas shall be reviewed by the appropriate local agricultural advisory committee and by the Agricultural Lands Condemnation Approval Board. Each reviewing body may suggest any modification to the State-funded development projects which ensures the integrity of the agricultural security areas against nonfarm encroachment.

(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 security 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 local government units encompassing the agricultural security area, the county governing body, and the Agricultural Security Area Advisory Committee. Review by the Agricultural Lands Condemnation Approval 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 *that does not permanently impact the tilling of soil* 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.

* * *

Section 4. Section 14.1(a)(3)(vi) and (viii), (b)(2)(i)(B) and (C), (xi) and (xii), (b.1) introductory paragraph and (d)(1)(iii) of the act, amended added December 21, 1998 (P.L.1056, No.138), May 30, 2001 (P.L.103, No.14) and November 1, 2005 (P.L.323, No.61), are amended, subsection (b)(2) is amended by adding a subparagraph, subsection (b)(2)(i) is amended by adding a clause, subsection (d)(1) is amended by adding a clause and the section is amended by adding a subsection to read:

Section 14.1. Purchase of agricultural conservation easements.

(a) State Agricultural Land Preservation Board.—The Department of Agriculture and the State Agricultural Land Preservation Board shall administer pursuant to this section a program for the purchase of agricultural conservation easements by the Commonwealth.

* * *

(3) It shall be the duty and responsibility of the State board to exercise the following powers:

* * *

(vi) To purchase agricultural conservation easements jointly with a county, *or jointly with a county and a local government unit, or jointly with a county and an eligible nonprofit entity, or jointly with a county, a local government unit and an eligible nonprofit entity*, if recommended by a county and approved by the State board as provided in subparagraph (iii).

* * *

(viii) To establish and maintain a central repository of records which shall contain records of county programs for purchasing agricultural conservation easements, records of agricultural conservation easements purchased by local government units, by local government units and counties **[and]**, by local government units and

the Commonwealth *and by¹ eligible nonprofit entities in accordance with subsection (b.2)* and records of agricultural conservation easements purchased by the Commonwealth. All records indicating the purchase of agricultural conservation easements shall refer to and describe the farm land subject to the agricultural conservation easement.

* * *

(b) County programs.—After the establishment of an agricultural security area by the governing body, the county governing body may authorize a program to be administered by the county board for purchasing agricultural conservation easements from landowners whose land is either within an agricultural security area or in compliance with the criteria set forth in paragraph (2)(i).

* * *

(2) It shall be the duty and responsibility of the county board to exercise the following powers:

(i) * * *

(A.1) Prior to exercising authority under subsection (b.2), to include in such rules and regulations, standards and procedures for the participation with eligible nonprofit entities in the purchase of agricultural conservation easements as described in subsection (b.2).

(B) To include in such rules and regulations, standards and procedures for the selection or purchase of agricultural conservation easements, *in accordance with subsection (b.2)*, by the county solely [or jointly with either the Commonwealth or a local government unit, or both,] *or jointly with the Commonwealth, a local government unit, an eligible nonprofit entity or any combination of these*, on that portion of a parcel which is not within an agricultural security area if all of the following criteria are complied with:

(I) The land is part of a parcel of farm land which is bisected by the dividing line between two local government units.

(II) The majority of the farm's viable agricultural land is located within an existing agricultural security area. Upon purchase of an easement covering the portion of the parcel which is not located within an agricultural security area, that portion of the parcel shall immediately become part of the previously established agricultural security area which contains a majority of the farm's viable agricultural land. The governing body which created the agricultural security area which contains a majority of the farm's viable agricultural land shall be responsible for the recording, filing and notification outlined in section 8(d) and (g)

¹"Commonwealth, by" in enrolled bill.

concerning land added to the agricultural security area pursuant to this clause.

(C) To include in such rules and regulations, standards and procedures for the selection or purchase of agricultural conservation easements, *in accordance with subsection (b.2)*, by the county solely or jointly with ~~[either]~~ the Commonwealth ~~[or]~~, a local government unit, ~~[or both]~~ *an eligible nonprofit entity or any combination of these*, on that portion of a parcel located in an adjoining county if all of the following criteria are complied with:

(I) The land is part of a parcel of farm land which is bisected by the dividing line between the purchasing county and the adjoining county.

(II) Either a mansion house is located on that portion of the parcel which is within the purchasing county or the dividing line between the counties bisects the mansion house and the owner of the parcel has chosen the purchasing county as the situs of assessment for tax purposes or, if there is no mansion house on the parcel, the majority of the farm's viable agricultural land is located in the purchasing county.

(III) The portion of the parcel located in the purchasing county is within an agricultural security area. Upon purchase of an easement by the purchasing county covering that portion of the parcel located in the adjoining county, the portion of the parcel located in the adjoining county shall immediately become part of the agricultural security area previously established in the purchasing county. The governing body which created the agricultural security area in the purchasing county shall be responsible for the recording, filing and notification outlined in section 8(d) and (g) concerning land added to the agricultural security area pursuant to this clause.

* * *

(xi) To recommend to the State board the purchase of agricultural conservation easements by the Commonwealth and the county jointly[,], *or jointly by the Commonwealth, the county and a local government unit, or jointly by the Commonwealth, the county and an eligible nonprofit entity, or jointly by the Commonwealth, the county, a local government unit and an eligible nonprofit entity.*

(xii) To purchase agricultural conservation easements jointly with the Commonwealth[,], *or jointly with the Commonwealth, the county and a local government unit, or jointly with the Commonwealth, the county and an eligible nonprofit entity, or jointly with the Commonwealth, the county, a local government unit and an eligible nonprofit entity.*

* * *

(xvi) Notwithstanding any other permitted or required use of accrued interest distributed in accordance with section 8(b.1) and (b.2) of the act of December 19, 1974 (P.L.973, No.319), known as the "Pennsylvania Farmland and Forest Land Assessment Act of 1974," to use any portion of that accrued interest in the following manner:

(A) To develop conservation plans.

(B) To monitor and enforce agricultural conservation easements, including the payment of legal costs associated with defending an agricultural conservation easement.

* * *

(b.1) Local government unit participation.—Any local government unit that has created an agricultural security area may participate along with an eligible county and the Commonwealth, and an eligible nonprofit entity, in the preservation of farmland through the purchase of agricultural conservation easements.

* * *

(b.2) Eligible nonprofit entity participation.—An eligible nonprofit entity may participate, along with an eligible county, the Commonwealth and a local government unit eligible to participate under subsection (b.1), in the preservation of farmland through the purchase of agricultural conservation easements.

(1) The eligible nonprofit entity may purchase an agricultural conservation easement if all of the following apply:

(i) The agricultural conservation easement is a joint purchase with the county and may include the Commonwealth or a local government unit, or both.

(ii) The deed of agricultural conservation easement is as prescribed by the State board for agricultural conservation easements purchased by the Commonwealth.

(2) The county board shall be responsible to record agricultural conservation easements where an eligible nonprofit entity is a party to the purchase of the easement. The easement shall be recorded by the county board in the office of the recorder of deeds of the county wherein the agricultural conservation easements are located. The county board shall submit to the State board a certified copy of agricultural conservation easements within 30 days after recording. The county board shall attach to all certified copies of the agricultural conservation easements submitted to the State board a description of the farmland subject to the agricultural conservation easements.

* * *

(d) Program approval.—

(1) The standards, criteria and requirements established by the State board for State board approval of county programs for purchasing agricultural conservation easements shall include, but not be limited to,

the extent to which the county programs consider and address the following:

* * *

(iii) The stewardship of the land and use of conservation practices and best land management practices, including, but not limited to, soil erosion and sedimentation control *as required by the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law,"* and nutrient *and odor* management[.] *as may be required by 3 Pa.C.S. Ch. 5 (relating to nutrient and odor management). A conservation plan shall only be required to be updated when a change in land management practice takes place or when a violation of "The Clean Streams Law" occurs.*

* * *

(v) (I) *Provisions requiring a farmland tract to be contiguous acreage of at least 50 acres in size unless the tract is at least ten acres in size and is either utilized for a crop unique to the area or is contiguous to property which has a perpetual conservation easement in place held by a "qualified organization" as defined in section 170(h)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 170(h)(3)).*

(II) *A county may require a farmland tract to be contiguous acreage of at least 35 acres in size unless the tract is at least ten acres in size and is either utilized for a crop unique to the area or is contiguous to a property which has a perpetual conservation easement in place held by a "qualified conservation organization" as defined in section 170(h)(3) of the Internal Revenue Code of 1986. If a county implements the provisions of this subclause, State funds used for the purchase of an agricultural conservation easement less than 50 acres in size may include costs incidental to the purchase and shall not exceed 50% of the purchase price per acre, unless it is at least ten acres in size and is either utilized for a crop unique to the area or is contiguous to a property which has a perpetual conservation easement in place held by a "qualified conservation organization" as defined in section 170(h)(3) of the Internal Revenue Code of 1986. A county program shall require a minimum weighted value of 20% for prioritizing applications for agricultural conservation easement purchase when implementing the provisions of paragraph (ii.1).*

* * *

Section 5. Section 14.2(a) of the act, added December 14, 1988 (P.L.1202, No.149), is amended to read:

Section 14.2. Agricultural Conservation Easement Purchase Fund.

(a) Purpose of fund.—

(1) The Agricultural Conservation Easement Purchase Fund shall be the source from which all moneys are authorized with the approval of the Governor to carry out the purpose of this act. [The]

(2) *Except as set forth in paragraph 3, the* moneys appropriated to the fund shall be utilized in accordance with the expenditures and distribution authorized, required or otherwise provided in the program for purchase of agricultural conservation easements contained in section 14.1, for the purpose of paying all costs, except administrative costs, incurred by the Commonwealth or a county incident to the purchase of agricultural conservation easements, and for the purpose of reimbursing nonprofit land conservation organizations for expenses incurred in acquiring and transferring agricultural conservation easements to the Commonwealth or a county.

(3) *Each fiscal year, up to \$200,000 of the money in the fund may be used for the purpose of reimbursement allocation under section 14.6(b). Up to 10% of these funds may be used for administrative expenses of the department incurred under section 14.6(b).*

* * *

Section 6. Section 14.4(7) of the act, added December 14, 1988 (P.L.1202, No.149), is amended to read:

Section 14.4. Legislative report.

The State board shall submit to the General Assembly an annual report no later than May 1. The report shall include, but not be limited to, the following information:

* * *

(7) The number and value of agricultural conservation easements purchased jointly by the Commonwealth and the counties, including the number and value of purchases made during the preceding calendar and the preceding fiscal year of the Commonwealth, *and the extent of local government unit or eligible nonprofit entity participation in the transaction.*

* * *

Section 6.1. The act is amended by adding sections to read:

Section 14.6. Land Trust Reimbursement Program.

(a) *Establishment.—The Land Trust Reimbursement Program is hereby established.*

(b) *Reimbursement.—The State board may allocate funds to reimburse land trusts for expenses incurred in acquiring agricultural conservation easements in this Commonwealth.*

(c) *Eligible expenses.—Eligible expenses include:*

- (1) *Appraisals.*
- (2) *Legal services.*
- (3) *Title searches.*
- (4) *Document preparation.*
- (5) *Title insurance.*

(6) *Closing fees.*

(7) *Survey costs.*

(d) *Limitations.—*

(1) *Reimbursement shall be limited to \$5,000 per easement.*

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

(e) *Eligibility.—To be eligible under this subsection, a land trust shall be an eligible nonprofit entity and shall:*

(1) *register with the State board;*

(2) *coordinate agricultural conservation easement purchase activities with the eligible county in which the activity occurs or coordinate such activities with the State board, if the activity does not occur within an eligible county; and*

(3) *submit an application to the State board, with the statement of costs incidental to acquisition, the deed of easement and any other documentation required by the State board, within 60 days of closing on the easement.*

Section 14.7. Acquisitions by donation.

(a) *General rule.—Notwithstanding any other provision of this act to the contrary, upon recommendation by an eligible county, the donation of an agricultural conservation easement may be acquired by the county, State board, an eligible nonprofit entity or a local government unit if all of the following apply:*

(1) *The land is used for agricultural production.*

(2) *The term of the agricultural conservation easement is perpetual.*

(3) *The applicable county program provides for the acquisition by donation of an agricultural conservation easement.*

(4) *The agricultural conservation easement is being acquired by donation by an eligible county or by the eligible county in conjunction with the Commonwealth, an eligible nonprofit entity or a local government unit, or any combination of these.*

(5) *Instruments and documents for the acquisition by donation of an agricultural conservation easement are approved by the State board or the county board, as the case may be, prior to execution and delivery. Proper releases from mortgage holders and lienholders must be obtained and executed to insure that all agricultural conservation easements are acquired by donation free and clear of all encumbrances.*

(6) *The agricultural conservation easement has title insurance.*

(7) *The deed of agricultural conservation easement is as prescribed by the State board for agricultural conservation easements purchased by the Commonwealth.*

(8) *The applicable county board records an agricultural conservation easement acquired by donation by the county in the office of the recorder of deeds of the county wherein the agricultural conservation easement is located and submits to the State board a*

certified copy of the agricultural conservation easement within 30 days after recording.

(9) If the land does not meet the minimum criteria established by the State board for purchase of an agricultural conservation easement, the land shall be contiguous to property which is subject to an agricultural conservation easement.

(b) Expenses.—The allocation of a county may be adjusted by a maximum of \$5,000 per easement for all costs, except administrative costs, incurred by the Commonwealth or a county incident to the acquisition by donation of an agricultural conservation easement.

Section 7. The amendment or addition of the following provisions shall apply to an agricultural conservation easement jointly recorded with a recorder of deeds of this Commonwealth by an “eligible nonprofit entity,” as defined in section 3 of the act, and a county or with the Commonwealth prior to or on the effective date of this section:

(1) The addition of section 2(6) of the act.

(2) The addition of the definition of “eligible nonprofit entity” in section 3 of the act.

(3) The following provisions of section 14.1 of the act:

(i) Subsection (a)(3)(vi) and (viii).

(ii) Subsection (b)(2)(i)(B) and (C), (xi) and (xii).

(iii) The introductory paragraph of subsection (b.1).

(iv) Subsection (b.2).

(4) The amendment of section 14.4(7) of the act.

Section 7.1. The provisions of 7 Pa. Code § 138e.16(a)(2) are abrogated.

Section 8. This act shall take effect immediately.

APPROVED—The 15th day of June, A.D. 2006.

EDWARD G. RENDELL