

APPROVED—The 19th day of January, A. D. 1968.

RAYMOND P. SHAFER

No. 442

AN ACT

SB 253

Authorizing the Commonwealth of Pennsylvania and the counties thereof to preserve, acquire or hold land for open space uses.

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

Section 1. Statement of Legislative Intent.—It is the purpose of this act to clarify and broaden the existing methods by which the Commonwealth may preserve land in or acquire land for open space uses. The Legislature finds that it is important to preserve open space in and near urban areas and to meet needs for recreation, amenity, and conservation of natural resources, including farm land, forests, and a pure and adequate water supply. The acquisition and resale of property interests authorized by this act are hereby declared to be for the public benefit, for the advancement of the public health, safety, morals and general welfare of the citizens of the Commonwealth, and for the promotion of sound land development by preserving suitable open space and concentrating more dense development in nearby areas.

Section 2. Definitions.—For the purpose of this act the following definitions shall apply:

(1) "Open space benefits." The benefits to the citizens of the Commonwealth which result from the preservation or restriction of the use of selected predominantly undeveloped open spaces or areas, including but not limited to: (i) the protection and conservation of water resources and watersheds, by appropriate means, including but not limited to preserving the natural cover, preventing floods and soil erosion, protecting water quality and replenishing surface and ground water supplies; (ii) the protection and conservation of forests and land being used to produce timber crops; (iii) the protection and conservation of farmland; (iv) the protection of existing or planned park, recreation or conservation sites; (v) the protection and conservation of natural or scenic resources, including but not limited to soils, beaches, streams, flood plains, steep slopes or marshes; (vi) the protection of scenic areas for public visual enjoyment from public rights of way; (vii) the preservation of sites of historic, geologic or

botanic interest; (viii) the promotion of sound, cohesive, and efficient land development by preserving open spaces between communities.

(2) "Interest in real property." Any right in real property, improvements thereto or water, whatsoever, including but not limited to a fee simple, easement, remainder, future interest, lease, license, restriction or covenant of any sort, option or contractual interest or right concerning the use of or power to transfer property.

(3) "Open space property interests." Any interest in real property acquired hereunder for the purpose of achieving open space benefits.

(4) "Open space uses." Land uses which are not inconsistent with the achievement of open space benefits.

(5) "County." A county, or a county authority having among the purposes for which it was created the achievement of one or more of the open space benefits set forth in this section.

Section 3. Planning Requirements.—The Department of Forests and Waters and the Department of Agriculture shall not acquire any interest in real property under the provisions of this act, unless said real property has been designated for open space uses in a resource, recreation, or land use plan submitted to and approved by the State Planning Board. A county shall not acquire any interest in real property under the provisions of this act unless said real property has been designated for open space uses in a resource, recreation or land use plan approved by the County Planning Commission.

Section 4. Applicability.—The Commonwealth of Pennsylvania, through the Department of Forests and Waters or the Department of Agriculture, may exercise the powers granted by this act only with the consent of the county commissioners of the county in which the real property is situated. All counties may exercise the powers granted by this act, without limitation as to area.

Section 5. Acquisition of Interests in Real Property.—(a) The Commonwealth of Pennsylvania, through the Department of Forests and Waters, may acquire any interest in real property by purchase, contract, condemnation, gift, devise or otherwise, for any of the following purposes:

(1) To protect and conserve water resources and watersheds;

(2) To protect and conserve forests and land being used to produce timber crops;

(3) To protect an existing or planned park, forest, wildlife preserve, nature reserve or other recreation or conservation site by controlling the use of contiguous or nearby lands in order to protect the scenic, aesthetic or watershed values of the site;

(4) To protect and conserve natural or scenic resources, including but not limited to soils, beaches, streams, flood plains or marshes;

(5) To protect scenic areas for public visual enjoyment from public rights of way;

(6) To preserve sites of historic, geologic or botanic interest;

(7) To promote sound, cohesive, and efficient land development by preserving open spaces between communities;

(8) To limit the use of the real property so as to achieve open space benefits by reselling real property acquired in fee simple, subject to restrictive covenants or easements limiting the use thereof for the purposes specified in clauses (1) through (7) hereof.

(b) The Commonwealth of Pennsylvania, through the Department of Agriculture, may acquire any interest in real property by purchase, contract, gift, or devise for any of the following purposes:

(1) To protect and conserve farmland;

(2) To protect and conserve water resources and watersheds;

(3) To limit the use of real property so as to achieve open space benefits by reselling real property acquired in fee simple, subject to restrictive covenants or easements limiting the use thereof for the purposes specified in clauses (1) and (2) hereof.

(c) Counties may acquire any interest in real property by purchase, contract, condemnation, gift, devise or otherwise, for any of the purposes set forth in clauses (a) (1) through (a) (8) of this section, and may acquire any interest in real property by purchase, contract, gift or ¹devise, for any of the purposes set forth in clause (b) (1) of this section.

Section 6. Public Hearing.—Interests in real property to be acquired pursuant to the provisions of this act shall be designated by the Department of Forests and Waters, the Department of Agriculture or the county, whichever is acquiring them. After such designation, the said interests shall not be acquired until a public hearing is held and after notice to all owners of said interests in real property and to the municipalities in which county said interests in real property are located, in each county where the land is situate, at which hearing the department or county concerned shall set forth the interests to be taken and their proposed open space benefits. At the public hearing persons and municipalities affected by the proposed acquisition of interests in real property shall have an opportunity to present relevant evidence.

Section 7. Property Acquired in Fee Simple.—If the owner of the interests in real property to be acquired pursuant to the provisions of this act prefers to have the Commonwealth or the county acquire the property in fee simple, the Commonwealth or the county shall be required to acquire the fee simple. All real property acquired in fee simple by the Commonwealth, through either the Department of Forests and Waters or the Department of Agriculture, or by a county, under the provisions of this act, shall be offered for resale publicly in the manner provided by law within two years of the date of acquisition, subject to restrictive covenants or easements limiting the land to such open space uses as may be specified by the designating department or agency in accordance with section 6 hereof, and consistent

¹ "devise" in original.

with the resource, recreation, or land use plan established in accordance with section 4 hereof. In the case of the Commonwealth, such resales may be made without specific authority of the General Assembly and shall be through the Department of Property and Supplies at public sale in the manner provided by law.

Section 8. Exercise of Eminent Domain.—Use of the power of eminent domain to acquire interests in real property for the purposes of this act shall be exercised in accordance with the provisions of the Eminent Domain Code of the Commonwealth.

Section 9. Assessment.—Any open space property interest acquired by the Commonwealth or a county under this act is held for public purposes, and shall be exempt from taxation. The assessment of private interests in land subject to open space property interests under this act shall reflect any change in market value of the property which may result from the acquisition of open space property interests by the Commonwealth or a county.

Section 10. Termination or Disposition of Open Space Property Interests.—If the Commonwealth, through either the Department of Forests and Waters or the Department of Agriculture with the approval of the State Planning Board, or a county with the approval of its County Planning Commission, determines that it is essential for the orderly development of an area to terminate or sell open space property interests acquired under this act other than property held in fee simple, the Commonwealth or the county shall offer to transfer to the original property owner from whom said property interests other than fee simple were acquired, or his estate if the original property owner, or his estate, is the current property owner, said property interests at a price which shall be equal to the price paid by the Commonwealth or the county to the original property owner for said interests; and, if said offer is not accepted within ninety days, the Commonwealth or the county shall then sell the open space property interests at public sale in the manner provided by law. In the case of the Commonwealth, such transfer or sale may be made without specific authority of the General Assembly, and shall be through the Department of Property and Supplies at public sale in the manner provided by law.

Section 11. Utility Rights of Way; Underground Gas Storage.—The ownership by the Commonwealth or a county of an open space property interest shall not preclude the acquisition, by lease, purchase, or eminent domain, and use of rights of way or underground gas storage rights in such property by a public utility or other body entitled to exercise the power of eminent domain, if in the case of an acquisition by a body other than a public utility the State Planning Board, or, in the case of ownership by a county, the County Planning Commission, after notice to the Department of Forests and Waters or the Department of Agriculture as the case may be, after public hearing, shall approve such acquisition, or in the case of acquisition by a public utility if the Pennsylvania Public Utility Commission,

after notice to the Department of Forests and Waters, the Department of Agriculture, or the county, as the case may be, and after public hearing, shall find that such acquisition and use are necessary or proper for the service, accommodation, convenience or safety of the public.

Section 12. Severability; Inconsistent Laws.—If any section, provision, or clause of this act shall be declared invalid or inapplicable to any persons or circumstances such action shall not be construed to affect the rest of the act or circumstances not so affected. All laws or portions of laws inconsistent with the policy and provisions of this act are hereby repealed to that extent.

Section 13. Effective Date.—This act shall take effect immediately.

APPROVED—The 19th day of January, A. D. 1968.

RAYMOND P. SHAFER

No. 443

AN ACT

SB 509

Authorizing the creation of indebtedness of five hundred million dollars for the conservation and reclamation of land and water resources; defining the powers and duties of certain offices, agencies and political subdivisions; providing for the allotment of proceeds hereunder including Commonwealth grants; prescribing standards and making appropriations.

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 Land and Water Conservation and Reclamation Act.”

Section 2. Findings and Declarations of Policy.—It is hereby determined and declared as a matter of legislative finding that:

(1) Fundamental to the health and welfare of the people of Pennsylvania are the land and water resources of the State.

(2) The rapid growth of Pennsylvania’s urban and suburban population requires the development of park, recreation and open space lands so that these public lands may be immediately open, available and used by the citizens of Pennsylvania.

(3) The prevention, control and elimination of stream pollution from mine drainage; the prevention, control and elimination of air pollution from burning coal refuse banks; the restoration of abandoned strip mine areas; the control and extinguishment of surface and underground fires in abandoned mines, and the alleviation and