

No. 1990-57

## AN ACT

## HB 2334

Amending the act of June 30, 1981 (P.L.128, No.43), entitled "An act authorizing the creation of agricultural areas," further providing for agricultural conservation easements; further defining the term "agricultural conservation easement"; and further providing for the allocations of State moneys.

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

Section 1. The definition of "agricultural conservation easement" in section 3 of the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law, amended December 14, 1988 (P.L.1202, No.149), is amended 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:

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"Agricultural conservation easement." An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of the land for any purpose other than agricultural production. The easement may be granted by the owner of the fee simple to any third party or to the Commonwealth, to a county governing body or to a unit of local government. It may be granted for a term of 25 years or in perpetuity, as the equivalent of covenants running with the land. *The exercise or failure to exercise any right granted by the easement shall not be deemed to be management or control of activities at the site for purposes of enforcement of the act of October 18, 1988 (P.L.756, No.108), known as the "Hazardous Sites Cleanup Act."*

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Section 2. Section 14.1(a)(3)(i), (c) and (h)(7) and (8) of the act, added December 14, 1988 (P.L.1202, No.149), are amended 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.

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

(i) To adopt rules and regulations pursuant to this act: Provided, That the board shall have the power and authority to promulgate, adopt, publish and use guidelines for the implementation of this act [for

a period of one year immediately following the effective date of this section] until September 30, 1990, or the effective date of final rules and regulations, whichever first occurs, pending adoption of final rules and regulations. Guidelines proposed under the authority of this section shall be subject to review by the General Counsel and the Attorney General in the manner provided for the review of proposed rules and regulations pursuant to the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," but shall not be subject to review pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act."

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(c) Restrictions and limitations.—An agricultural conservation easement shall be subject to the following terms, conditions, restrictions and limitations:

(1) The term of an agricultural conservation easement shall be perpetual or for a term of 25 years.

(2) An agricultural conservation easement shall not be sold, conveyed, extinguished, leased, encumbered or restricted in whole or in part for a period of 25 years beginning on the date of purchase of the easement.

(3) If the land subject to the agricultural conservation easement is no longer viable agricultural land, the Commonwealth, subject to the approval of the State board, and the county, subject to the approval of the county board, may sell, convey, extinguish, lease, encumber or restrict an agricultural conservation easement to the current owner of record of the farmland subject to the easement after the expiration of 25 years from the date of purchase of the easement for a purchase price equal to the value at the time of resale determined pursuant to subsection (f) at the time of conveyance. A conveyance by the Commonwealth pursuant to this subsection shall not be subject to the requirements of Article XXIV-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929." The purchase price shall be payable to the Commonwealth and the county as their respective legal interests in the agricultural conservation easement appear, and a separate payment shall be made to the Commonwealth and the county accordingly at the time of settlement. Any payment received by the Commonwealth pursuant to this provision shall be paid into the fund.

(4) Instruments and documents for the purchase, sale and conveyance of agricultural conservation easements shall be 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 purchased free and clear of all encumbrances.

(5) Whenever any public entity, authority or political subdivision exercises the power of eminent domain and condemns land subject to an agricultural conservation easement, the condemnor shall provide just compensation to the owner of the land in fee and to the owner of the easement as follows:

(i) The owner of the land in fee shall be paid the full value which would have been payable to the owner but for the existence of an agricultural conservation easement less the value of the agricultural conservation easement at the time of condemnation.

(ii) The owner of the easement shall be paid the value of the easement at the time of condemnation.

(6) An agricultural conservation easement shall not prevent:

(i) The granting of leases, assignments or other conveyances or the issuing of permits, licenses or other authorization for the exploration, development, storage or removal of coal by underground mining methods, oil and gas by the owner of the subject land or the owner of the underlying coal by underground mining methods, oil and gas or the owner of the rights to develop the underlying coal by underground mining methods, oil and gas, or the development of appurtenant facilities related to the removal of coal by underground mining methods, oil or gas development or activities incident to the removal or development of such minerals.

(ii) The granting of rights-of-way by the owner of the subject land in and through the land for the installation of, transportation of, or use of water, sewage, electric, telephone, coal by underground mining methods, gas, oil or oil products lines.

(iii) Construction and use of structures on the subject land necessary for agricultural production.

(iv) Construction and use of structures on the subject land for the purpose of providing necessary housing for seasonal or full-time employees: Provided, That only one such structure may be constructed on no more than two acres of the subject land during the term of the agricultural conservation easement.

(v) Customary part-time or off-season minor or rural enterprises and activities which are provided for in the county Agricultural Conservation Easement Purchase Program approved by the State board under subsection (d).

***(7) Nothing in this act shall prohibit a member of the State board or county board or his or her family from selling a conservation easement under this program, provided that all decisions made regarding easement purchases be subject to the provisions of section 3(j) of the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law.***

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(h) Allocation of State moneys.—The State board shall make an annual allocation among counties, except counties of the first class, for the purchase of agricultural conservation easements.

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***(7) The first [three annual allocations] annual allocation to a county under paragraphs (3), (4) and (5)(i) shall continue for three county fiscal years, and the second and third such annual allocations shall each continue for two county fiscal years. Thereafter each such annual allocation shall be***

for one county fiscal year. Such annual allocations which have not been expended or encumbered at the end of the period for which they were made shall be reallocated in the subsequent county fiscal year to a county which used at least 90% of such total annual allocation. The reallocation to a county under this paragraph shall be the total amount available for reallocation under this paragraph multiplied by a percentage equal to the annual appropriation of local moneys appropriated by the county for the previous county fiscal year for the purchase of agricultural conservation easements divided by the aggregate of local moneys appropriated by all eligible counties for the previous county fiscal year for the purchase of agricultural conservation easements.

(8) Initial allocations to counties under paragraphs (2) and (5)(ii) shall continue until the end of the ~~[third]~~ *fourth* county fiscal year occurring after the effective date of this act. The sum of the total annual allocations of all counties under paragraphs (2) and (5)(ii) which have not been expended or encumbered by the end of the third county fiscal year, and every county fiscal year thereafter, occurring after the effective date of this act shall be reallocated in the subsequent county fiscal year to a county which used at least 90% of such total allocation. Fifty percent of the amount available for allocation under this paragraph shall be reallocated in the manner set forth in paragraph (2), and 50% of the amount available for allocation under this paragraph shall be reallocated in the manner set forth in paragraphs (3), (4) and (5).

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Section 3. This act shall take effect immediately.

APPROVED—The 22nd day of June, A. D. 1990.

ROBERT P. CASEY