

No. 1979-100

AN ACT

SB 276

Amending the act of April 9, 1929 (P.L. 177, No. 175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," further providing for the powers and duties of the Secretary of Transportation as to real property, restricting the right to condemn prime agricultural lands for certain purposes and creating the Agricultural Lands Condemnation Approval Board.

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

Section I. The act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929," is amended by adding a section to read:

Section 306. Agricultural Lands Condemnation Approval Board.—(a) The Agricultural Lands Condemnation Approval Board is hereby created as an independent administrative board and shall be made up of six (6) members, consisting of the Director of the Office of Policy and Planning, or his designee, the Secretary of Agriculture, or his designee, the Secretary of Environmental Resources, or his designee, the Secretary of Transportation, or his designee, and two active farmers appointed by the Governor, with the advice and consent of a majority of the Senate, for a term of four (4) years. The Secretary of Agriculture shall be chairman of such committee and shall convene the committee from time to time as needed to carry out its duties. The farm members of the committee shall be reimbursed for actual expenses incurred in the performance of their duties. Such expenses and any others incurred by the committee shall be paid for from appropriations made to the Office of State Planning and Development.

(b) Before condemning for any of the purposes set forth in subsection (d) any agricultural lands, as classified by the Agricultural Soil Conservation Service of the United States Department of Agriculture, which lands are being used for productive agricultural purposes, but not including the growing of timber, the Commonwealth of Pennsylvania and any of its political subdivisions, agencies or authorities shall request the

Agricultural Lands Condemnation Approval Board to determine that there is no reasonable and prudent alternative to the utilization of such lands for the project.

(c) The board shall have sixty (60) days in which to determine whether there is a feasible and prudent alternative to the condemnation. If the board determines that there is no feasible and prudent alternative, or if the board fails to act within sixty (60) days of receipt of the request, the requesting body may proceed to condemn; otherwise, the condemnation shall not be effected.

(d) The board shall have jurisdiction over condemnation for the following purposes:

(1) Highway purposes, but not including activities relating to existing highways such as, but not limited to, widening roadways, the elimination of curves¹ or reconstruction.

(2) Disposal of solid or liquid waste material, but not including underground pipes used to transport waste.

Section 2. The first paragraph of clause (15) of subsection (a) of section 2002 of the act, amended December 3, 1970 (P.L.834, No.275), is amended to read:

Section 2002. Powers and Duties of the Department.—(a) The Department of Transportation in accord with appropriations made by the General Assembly, and grants of funds from Federal, State, regional, local or private agencies, shall have the power, and its duty shall be:

* * *

(15) To consult with appropriate officials as designated by the chief administrative officer of the *Department of Agriculture*, the Department of Environmental Resources, the Department of Community Affairs, the Department of Health, State Planning Board and the Fish Commission regarding the environmental hazards and the *agricultural*, conservation, sanitary, recreation and social considerations that may arise by reason of the location, design, construction or reconstruction of any transportation or air facility.

* * *

Section 3. Clause (e) of section 2003 of the act is amended to read:

Section 2003. Machinery, Equipment, Lands and Buildings.—The Department of Transportation in accord with appropriations made by the General Assembly, and grants of funds from Federal, State, regional, local or private agencies, shall have the power, and its duty shall be:

* * *

(e) [With the approval of the Governor and of the Department of Property and Supplies to purchase or otherwise] *(1) To acquire, by gift, purchase, condemnation or otherwise, land in fee simple or such lesser estate or interest as it shall determine, in the name of the Commonwealth, for [the purpose of erecting thereon garages, storage sheds, or other buildings necessary in connection with the construction or maintenance of highways] all transportation purposes, including marking, rebuilding,*

¹"curbs" in original.

relocating, widening, reconstructing, repairing and maintaining State designated highways and other transportation facilities, and to erect on the land thus acquired such structures and facilities, including garages, storage sheds or other buildings, as shall be required for transportation purposes. Land shall not be acquired for any capital project unless the project is itemized in an approved capital budget. Notwithstanding any other provision of this or any other act, when the department seeks to take by appropriation real property or an interest in real property which the department intends to use for other than operating right-of-way for facilities such as maintenance buildings and construction facilities and such real property or interest therein belongs to a railroad, the department shall show by clear and convincing evidence that the activity contemplated on the site proposed to be appropriated could not have been conducted economically at an alternate location.

(2) In addition to land required for highways and other transportation facilities, the department may acquire:

(i) Landlocked parcels and other remainders except that remainders may be condemned only if department appraisals indicate that no substantial savings can be effected by acquiring only the land required for right-of-way purposes;

(A) Prior to condemning a remainder, other than a landlocked parcel, the department shall offer to review with the landowners its decision to acquire the remainder and the appraisal or appraisals on which the decision was based.

(B) Within thirty (30) days after the condemnation of a remainder, the landowner may file a preliminary objection protesting the condemnation of the remainder. If the court, after a hearing, shall determine that substantial savings can be effected by acquisition of only the land required for right-of-way purposes, it shall order the title to the remainder to be reverted in the landowner, nunc pro tunc, and the landowner shall be entitled to petition for damages under section 408 of the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the "Eminent Domain Code."

(ii) Land abutting a highway or other transportation facility if the secretary determines that such land has been or is likely to be adversely affected by reason of its proximity to such highway or other transportation facility, or is required for the purpose of mitigating adverse effects on other land adversely affected by its proximity to such highway or other transportation facility; and

(iii) The fee underlying any easement previously acquired by the department.

(3) Notwithstanding any inconsistent provisions in this or any other act, the provisions of section 306 restricting the condemnation of prime agricultural land shall be applicable to condemnation proceedings by the department.

(4) The secretary shall make payments in lieu of real estate taxes to the county, municipality and school district on excess remainders, landlocked

parcels and any other land or improvements located outside of the right-of-way until such land shall be used for highway or other transportation purposes, or conveyed.

(5) Lands which are being used at the time of acquisition for productive agricultural purposes shall continue to be made available to the owner for such purposes until actually needed for the transportation project.

(6) In order to acquire land under this clause, a description or plan thereof shall be prepared, containing the names of the owners or reputed owners, an indication of the estate or interest to be acquired and such other information as the department shall deem necessary. Execution by the secretary of such description or plan shall constitute authority for the filing of a declaration of taking in accordance with the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the "Eminent Domain Code." The description or plan shall be filed as a public record in the department.

(7) Any other provisions of this act to the contrary notwithstanding, the department may sell at public sale any land acquired by the department if the secretary determines that the land is not needed for present or future transportation purposes:

(i) Improved land occupied by a tenant of the department shall first be offered to the tenant at its fair market value as determined by the department, except that if the tenant is the person from whom the department acquired the land, it shall be offered to the tenant at the acquisition price, less costs, expenses and reasonable attorneys' fees incurred by the person as a result of the acquisition of the land by the department. If there is no tenant and the person from whom the department acquired the land did not receive a replacement housing payment under section 602-A of the "Eminent Domain Code," or under former section 304.3 of the act of June 1, 1945 (P.L.1242, No.428), known as the "State Highway Law," the land to be sold shall first be offered to such person at the acquisition price, less costs, expenses and reasonable attorneys' fees incurred by the person as a result of the acquisition of the land by the department.

(ii) Unimproved land shall first be offered to the person from whom it was acquired at its acquisition price, less costs, expenses and reasonable attorneys' fees incurred by the person as a result of the acquisition of the land by the department, if the person still retains title to land abutting the land to be sold. If the land abutting the land to be sold has been conveyed to another person, the land to be sold shall first be offered to that person at its fair market value as determined by the department.

(iii) Notice of the offer described in either subclause (i) or (ii) shall be sent by certified mail, or, if notice cannot be so made, in the manner required for "in rem" proceedings. The offeree shall have one hundred twenty (120) days after receipt of notice to accept the offer in writing.

(iv) Revenue from any sale of land acquired with motor license funds shall be deposited in the Motor License Fund.

(8) If the department acquires lands for transportation purposes other than highways, the prohibition contained in section 2001.2 shall apply.

(9) The secretary shall have the power to promulgate such rules and regulations as he deems necessary to carry out the provisions of this clause.

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Section 4. It is the legislative intent to establish the authority and procedure for the acquisition of land for all State designated highways and other transportation facilities and for the disposition thereof. The provisions of section 210 of the act of June 1, 1945 (P.L.1242, No.428), known as the "State Highway Law," and of section 8 of the act of May 29, 1945 (P.L.1108, No.402), entitled "An act authorizing the establishment, construction and maintenance of limited access highways and local service highways; and providing for closing certain highways; providing for the taking of private property and for the payment of damages therefor; providing for sharing the costs involved and for the control of traffic thereover; providing penalties, and making an appropriation," are superseded insofar as they may be inconsistent with this act; and Article III of the "State Highway Law" is repealed absolutely.

Section 5. This act shall not authorize condemnation of land for the opening of any street, lane, alley or public road through any land used as a burial ground or for cemetery purposes or through any land already acquired and intended to be used for a burial ground or for cemetery purposes, nor shall anything herein contained be construed to alter or repeal the requirements of subsection (d) of section 2, act of May 29, 1945 (P.L.1108, No.402), referred to as the Limited Access Highway Law.

Section 6. This act shall take effect immediately.

APPROVED—The 7th day of December, A. D. 1979.

DICK THORNBURGH