

No. 1988-149

AN ACT

HB 442

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 areas, public hearings, evaluation criteria, decisions and reviews of proposed areas, appeals, limitation on local agencies, policy of Commonwealth agencies, limitations on exercise of eminent domain and purchases of development easements in agricultural areas; authorizing the issuance of bonds for the purchase of agricultural conservation easements; making an appropriation; and making editorial changes.

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

Section 1. Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13 of the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law, are amended 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 [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.

It is further the purpose of this act to:

- (1) Encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use.*
- (2) Protect farming operations in agricultural security areas from incompatible nonfarm land uses that may render farming impracticable.*

(3) Assure permanent conservation of productive agricultural lands in order to protect the agricultural economy of this Commonwealth.

(4) Provide compensation to landowners in exchange for their relinquishment of the right to develop their private property.

(5) Leverage State agricultural easement purchase funds and protect the investment of taxpayers in agricultural conservation easements.

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 Security 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 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.*

"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.] *including the processing or retail marketing of such crops, livestock or livestock products if more than 50% of such processed or merchandised products are produced by the farm operator.*

"Agricultural security 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 and designated as such by the procedures set forth in this act or designated as such pursuant to the act of January 19, 1968 (1967 P.L.992, No.442), entitled "An act authorizing the Commonwealth of Pennsylvania and the counties thereof to preserve, acquire or hold land for open space uses," prior to the effective date of this amendatory act, by the governing body of the county or governing body of the municipality in which such agricultural land is located on the basis of criteria and procedures which predate the effective date of this amendatory act: Provided, That an owner of land designated as such under the authority of the act of January 19, 1968 (1967 P.L.992, No.442) may withdraw such land from an agricultural security area by providing written notice of withdrawal to the county governing body or governing body of the municipality in which such land is located within 180 days of the effective date of this amendatory act.*

["Board."] The Agricultural Lands Condemnation Approval Board.]

"County board." The County Agricultural Land Preservation 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.

(7) *Aquatic plants and animals and their byproducts.*

“Department.” *The Department of Agriculture of the Commonwealth.*

“Description of the proposed area.” *A complete and accurate list of the name or names of the owner or owners of each parcel of land to be included in the proposed agricultural security area, the tax parcel number or account number of each parcel and the number or account number of acres (including partial acres, to the nearest thousandth) contained in each parcel. Such description shall use county tax map references for determining boundaries of each parcel, and no survey of parcels shall be required, except when an individual parcel included in the agricultural security area shall represent less than the entire amount of contiguous land contained in the property of an owner.*

[“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.]

“Farmland value.” *The price as of the valuation date for property used for normal farming operations which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.*

“Fiscal year.” *Fiscal year of the Commonwealth.*

“Fund.” *The Agricultural Conservation Easement Purchase Fund established by the act of May 13, 1988 (P.L.398, No.64), entitled ‘An act amending the act of June 18, 1982 (P.L.549, No.159), entitled ‘An act providing for the administration of certain Commonwealth farmland within the Department of Agriculture,’ providing for the disposition of proceeds from the sale of certain land, equipment or facilities.’*

“Governing body.” The governing body of a local government unit.

“Joint ownership.” *Joint tenancy in an agricultural conservation easement purchase as the interests of the parties appear.*

“Local government unit.” Any city, borough, township or town.

“Market value.” *The price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.*

“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] crops, livestock, and [their] livestock products and in the production and harvesting of agricultural, agronomic, horticultural, silvicultural, and [aquicultural] aquacultural crops and commodities.

“Planning commission.” [A local government planning commission.] *A local government planning commission or agency which has been designated by the governing body of the local government unit to establish and foster a comprehensive plan for land management and development within the local government unit, or if a county planning commission or agency, then that entity which has been designated by the county governing body to establish and foster a comprehensive plan for land management and development within the county.*

“Secretary.” *The Secretary of Agriculture of the Commonwealth.*

“State board.” *The State Agricultural Land Preservation Board.*

“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 Security Area Advisory Committee.**

The governing body of any local government may establish an Agricultural Security 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 security 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 security 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 security areas.*

(a) *Proposals for creation.*—Any owner or owners of land *used for agricultural production* may submit a proposal to the governing body for the creation of an agricultural *security* 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.] *That each parcel or area is at least ten acres.*

(a.1) *Submitting the proposal.*—Such proposal *for creation of an agricultural security area* 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.]

(a.2) *Proposals for agricultural security areas in more than one local government unit.*—*If the land included in a proposal for an agricultural security area is situated in more than one local government unit, the proposal shall be submitted to, and approval of the proposal shall be sought from, the governing body of each such local government unit affected. A rejection by a governing body shall exclude that portion of the proposal which is situated within the local government unit. However, such rejection shall not preclude the approval of the remaining portion of the proposal as an agricultural security area by the governing body of the other affected local government units, provided that the total acreage approved is at least 500 acres and that such approved portion meets all other requirements imposed under this act for agricultural security areas.*

(b) *Notice.*—Upon the receipt of such a proposal, the governing body shall *acknowledge receipt of the proposal at the next regular or special meeting and shall* thereupon provide notice of such proposal by publishing a notice in a newspaper having general circulation within the proposed *agricultural security* area and by posting such notice in five conspicuous places within, adjacent or near to the proposed area. *If the governing body fails to provide the required notice within 15 days of receiving a proposal as provided in this subsection, a person who is adversely affected by this inaction may bring an action in mandamus to compel compliance.* The notice shall contain the following information:

(1) A statement that a proposal for an agricultural *security* 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] *local government unit encompassing or adjacent to* the proposed area, or any landowner who owns the land proposed to be included within the pro-

posed 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. *The statement shall indicate that objections to the proposal, and proposed modifications to the proposal must be filed with the governing body and the planning commission within 15 days of the date of publication of the notice.*

[(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)] (4) A statement that at the termination of the **[30-day] 15-day** period *under paragraph (3)*, 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] local government units up to seven days prior to advertisement of public hearing as provided in section 6(a).**

(d) Report by planning commission.—The governing body shall, upon the termination of **[such 30-day period] the 15-day period provided in subsection (b)(3)**, refer such proposal and proposed modifications to the planning commission**[, which shall, within 45 days,].** *The planning commission shall have up to 45 days to review the proposal and proposed modifications and report to the governing body the potential effect of such proposal and proposed modifications upon the local government's planning policies and objectives. The failure of the planning commission to submit a report within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the planning commission.*

(e) Referral to advisory committee.—The governing body shall also, upon the termination of such **[30-day] 15-day** period, refer such proposal and proposed modifications to the Agricultural Security Area Advisory Committee**[, which shall, within 45 days].** *The committee shall have up to 45 days to review the proposal and proposed modifications and report to the governing body its recommendations concerning the proposal and proposed modifications. The failure of the advisory committee to submit a report within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the advisory committee.*

Section 6. Public hearings.

(a) Hearings.—The governing body**[,] shall hold a public hearing relative to the proposed agricultural security area** upon receipt of the reports from the advisory committee and the planning commission**[, hold a public hearing relative to the proposed agricultural area] or upon expiration of the 45-day period as provided in section 5.**

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

(c) Notice of hearing.—[A] Pursuant to the act of July 3, 1986 (P.L. 388, No. 84), known as the “Sunshine Act,” a hearing notice shall be published in a newspaper having a general circulation within the proposed area [and]. *In addition, notice 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] or whose land is included in proposed modifications, and to all landowners within the proposed agricultural security area. Notice also shall be given* 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 Security 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) *Land proposed for inclusion in an agricultural security area shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if at least 50% in the aggregate of the land to be included in an agricultural security area falls into one of the following categories: land whose soils are classified in Soil Conservation Service Capability Classes I through IV, excepting IV(e); land which falls within the Soil Conservation Service classification of "unique farm land"; or land whose soils do not meet Capability Classes I through IV but which is currently in active farm use and is being maintained in accordance with the soil erosion and sedimentation plan applicable to such land.*

(2) *Use of land proposed for inclusion in an agricultural security area shall be compatible with local government unit comprehensive plans. Any zoning shall permit agricultural use but need not exclude other uses.*

(3) *The land proposed for inclusion in the agricultural security area, and any additions which are proposed subsequently, shall be viable agricultural land.*

(4) *Additional factors to be considered are the extent and nature of farm improvements, anticipated trends in agricultural economic and technological conditions and any other matter which may be relevant.*

(b) 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 county, 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] upon completion of the procedures and considerations prescribed in sections 5, 6 and 7,** may adopt the proposal or any modification of the proposal **[they deem] the governing body deems** appropriate, including the inclusion, to the extent feasible, of adjacent viable farm lands **if the land owner has made application to be included,** 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"] adoption of such area as an agricultural security area** nor shall the rights of utilities with respect to the existing facilities be disturbed or affected by such **[designation] adoption.** 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. *Failure by the governing body to act within this 180-day period shall be deemed adoption of the proposal without modification.*

(b) Effective date of creation of area.—[The proposed] *An agricultural security area[,] shall become effective upon the adoption of [same] the proposal or its modification by the governing body or upon expiration of the 180-day period as provided in subsection (a). If the proposal has included land situated in more than one local government unit, the agricultural security area shall become effective upon adoption by the local government unit or units of such portion of the proposal or proposed modifications as will meet the minimum acreage and other requirements of an agricultural security area provided in this act. Subsequent adoption of the remaining portion shall immediately effectuate such portion as an agricultural security area.*

(c) Filing of area description.—[Upon] *Within ten days of the creation of an agricultural security area, a description thereof shall be filed by the governing body with the recorder of deeds, who shall record the filing, and with the planning [commission] commissions of the county and of the local government unit. Filing shall be done in a manner which is sufficient to give notice to all persons who have, may acquire or may seek to acquire an interest in land in or adjacent to the created agricultural security area. Upon the failure of the governing body or recorder of deeds to file or record the created agricultural security area in accordance with the time or manner requirements prescribed in this subsection, any person adversely affected may file a petition with the court of common pleas to compel immediate compliance with the provisions of this subsection.*

(d) Participation.—Participation in the agricultural security area shall be available [at its creation] *on a voluntary basis* 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 security area shall only occur after seven years or whenever the agricultural security area is subject to review by the [local] governing body. *The addition of land to the agricultural security area may occur at any time during the seven-year period provided for in section 9: Provided, That any proposal for such addition, and for approval or disapproval thereof, shall follow all the procedures and requirements of sections 5, 6 and 7 and this section for proposal, consideration and decision as to approval or disapproval of the original agricultural security area. If the land comprising the additional proposal could be added to more than one existing agricultural security area, or shall lie in more than one township, the proposal shall be considered as an addition to the agricultural security area which was first approved.*

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]. *Prior to the commencement of such review, notice thereof shall be given by publication in a newspaper having a general circulation within the area, by notice posted in five conspicuous places within, adjacent to or near the area and by notice, in writing, to all persons owning land within the area that the agricultural security area will be reviewed in accordance with law. All such notices shall be given 30 days before the commencement of such review. Persons wishing to modify the area shall submit proposed modifications within 30 days of the date of such notices. Thereafter, in conducting such review the governing bodies shall follow all the procedures and requirements of sections 5, 6, 7 and 8 for the consideration of the agricultural security area and proposed modifications thereto. Within ten days of its action of termination or modification, the governing body shall file a notice of termination or modification with the recorder of deeds, who shall record such notice in such manner and place as has been provided in the original recording of the agricultural security area. The governing body shall also file a notice of termination or modification with the planning commissions of the county and of the local government unit. If the governing body does not act, or if a modification of an area is rejected, the area shall [continue as originally constituted] be deemed to be readopted without modification for another seven years.*

[(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.]

(b) Interim review.—If, within the seven-year period, 10% of the land within the agricultural security area is diverted to residential or nonagricultural commercial development, the governing body may review the diversion and may request, in writing, that the local and county planning commissions and the agricultural security area advisory committee study its review and make recommendations within 30 days of the written request. The governing body shall thereupon conduct a public hearing, after providing the same notice as that which is required under section 6(c). The hearing shall be held no sooner than 45 days after the governing body has submitted written requests for review and recommendation to the planning commissions and advisory committee. The governing body then may terminate or modify the agricultural security area.

Section 11. Limitation on local regulations.

(a) General rule.—Every municipality or political subdivision **[creating within which an agricultural security area is created]** 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 *within the area* 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 *security* 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 *security* 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]** *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 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 [municipalities] *local government units* encompassing the agricultural *security* area, the county [commissioners] *governing body*, and the Agricultural *Security* Area Advisory Committee. Review by the [board] *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 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 condemnor 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)] *Agricultural Lands Condemnation Approval Board* [or] and 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] *Agricultural Lands Condemnation Approval 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 *security* area for the project.

(ii) In all other cases not otherwise specifically provided for, the [board] *Agricultural Lands Condemnation Approval 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 *security* 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]** *local government units* 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]** *local government units* affected and any party who **[shall file]** *files* an appearance at such hearing. If the **[board]** *Agricultural Lands Condemnation Approval 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 2. Section 14 of the act is repealed.

Section 3. The act is amended by adding sections 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.*

(1) *There is established within the Department of Agriculture as a departmental board the State Agricultural Land Preservation Board. The State board shall consist of 17 members.*

(i) *There shall be eight voting ex officio members of the State board: the Secretary of Agriculture, who shall serve as the board chairman; the Secretary of Community Affairs, or his designee; the Secretary of Environmental Resources, or his designee; the Chairman and the Minority Chairman of the House Agriculture and Rural Affairs Committee, or their designees; the Chairman and the Minority Chairman of the Senate Agriculture and Rural Affairs Committee, or their designees; and the Dean of the College of Agriculture of The Pennsylvania State University.*

(ii) *Five members shall be appointed by the Governor. One member shall be a current member of the governing body of a county, one member shall be a person who is recognized as having significant knowledge in agricultural fiscal and financial matters, one member shall be an active resident farmer of this Commonwealth, one member shall be a residential, commercial or industrial building contractor, and one member shall be a current member of a governing body. Initially, two members shall be appointed for a term of four years, two members shall be appointed for a term of three years and one member shall be appointed for a term of two years. Thereafter, the terms of all members appointed herein shall be four years. The term of a person appointed to replace another member whose term has not expired shall be only the unexpired portion of that term. Members may be reappointed to successive terms.*

(iii) *One member each shall be appointed by the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President pro tempore of the Senate and the Minority Leader of the Senate, who shall, at the time of appointment, be resident farm owners and operators of at least one commercial farm in this Commonwealth. The initial term of the appointee of the President pro tempore of the Senate shall be four years, the initial term of the appointee of the Speaker of the House of Representatives shall be three years, the initial term of the appointee of the Minority Leader of the Senate shall be two years and the initial term of the appointee of the Minority Leader of the House of Representatives shall be one year. Thereafter, the terms of all appointees shall be four years. An appointment made to fill an unexpired term shall be only for the duration of the unexpired term. Members may be reappointed to successive terms.*

(2) *Nine members shall constitute a quorum for purposes of conducting meetings and official actions pursuant to authority given to the State board under this act.*

(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 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."*

(ii) *To adopt rules of procedure and bylaws governing the operations of the State board and the conduct of its meetings.*

(iii) *To review, and accept or reject, the recommendation made by a county board for the purchase of an agricultural conservation easement by the Commonwealth.*

(iv) *To execute agreements to purchase agricultural conservation easements in the name of the Commonwealth if recommended by a county and approved by the State board as provided in subparagraph (iii).*

(v) *To purchase in the name of the Commonwealth agricultural conservation easements if recommended by a county and approved by the State board as provided in subparagraph (iii).*

(vi) *To purchase agricultural conservation easements jointly with a county if recommended by a county and approved by the State board as provided in subparagraph (iii).*

(vii) *To allocate State moneys among counties for the purchase of agricultural conservation easements, in accordance with provisions of subsection (g).*

(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 counties, 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.*

(ix) *To record agricultural conservation easements purchased by the Commonwealth or jointly owned, in the office of the recorder of deeds of the county wherein the agricultural conservation easements are located.*

(x) *To establish and publish the standards, criteria and requirements necessary for State board approval of county programs for purchasing agricultural conservation easements.*

(xi) *To review and certify and approve, or disapprove, county programs for purchasing agricultural conservation easements.*

(xii) *To exercise other discretionary powers as may be necessary and appropriate for the exercise and performance of its duties, powers and responsibilities under this act.*

(xiii) *To determine an annual easement purchase threshold.*

(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 within an agricultural security area.*

(1) *The county board shall be composed of five, seven or nine members appointed by the county governing body. The chairman of the county governing body shall designate annually one member of the county board to serve as chairman of the county board. County board members shall be appointed from among the following groups: the number of*

farmers shall constitute one less than a majority of the board; one member shall be a current member of the governing body of a township or borough located within the county; one member shall be a commercial, industrial or residential building contractor; and the other members shall be selected at the pleasure of the county governing body. The county board membership of the member of the governing body of a township or borough located within the county shall be deemed vacant upon vacancy in, or the expiration of the term of, the township or borough office to which the member was elected. The term of the initial farmer appointees shall be three years, the initial term of the current member of the governing body of a township or borough shall be two years and the initial term of all other members shall be one year. Thereafter, the term of all members shall be three years.

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

(i) To adopt rules and regulations for the administration of a countywide program for the purchase of agricultural conservation easements within agricultural security areas in accordance with the provisions of this act, including, but not limited to, rules and regulations governing the submission of applications by landowners, establishing standards and procedures for the appraisal of property eligible for purchase as an agricultural conservation easement and establishing standards and procedures for the selection or purchase of agricultural conservation easements.

(ii) To adopt rules of procedure and bylaws governing the operation of the county board and the conduct of its meetings.

(iii) To execute agreements to purchase agricultural conservation easements in the name of the county.

(iv) To purchase in the name of the county agricultural conservation easements within agricultural security areas.

(v) To use moneys appropriated by the county governing body from the county general fund to hire staff and administer the countywide program.

(vi) To use moneys appropriated by the county governing body from the county general fund or the proceeds of indebtedness incurred by the county and approved by the county governing body for the purchase of agricultural conservation easements within agricultural security areas.

(vii) To establish and maintain a repository of records of farm lands which are subject to agricultural conservation easements purchased by the county and which are located within the county.

(viii) To record agricultural conservation easements purchased by the county in the office of the recorder of deeds of the county wherein the agricultural conservation easements are located and to 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 farm land subject to the agricultural conservation easements.

(ix) *To submit to the State board for review the initial county program and any proposed revisions to approved county programs for purchasing agricultural conservation easements.*

(x) *To recommend to the State board for purchase by the Commonwealth agricultural conservation easements within agricultural security areas located within the county.*

(xi) *To recommend to the State board the purchase of agricultural conservation easements by the Commonwealth and the county jointly.*

(xii) *To purchase agricultural conservation easements jointly with the Commonwealth.*

(xiii) *To exercise other powers which are necessary and appropriate for the exercise and performance of its duties, powers and responsibilities under this act.*

(3) *The county may incur debt pursuant to the act of July 12, 1972 (P.L. 781, No. 185), known as the "Local Government Unit Debt Act," for the purchase of agricultural conservation easements.*

(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).

(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:

(i) The quality of the farmlands subject to the proposed easements, including soil classifications and productivity.

(ii) The likelihood that the farmlands would be converted to non-agricultural use unless subject to an agricultural conservation easement. Priority for the purchase of an agricultural conservation easement shall

be given to farmlands most likely to be converted to nonagricultural use. For purposes of considering the likelihood of conversion, the existence of a zoning classification of the land shall not be relevant, but the market for nonfarm use or development of farmlands shall be relevant.

(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 and nutrient management.

(iv) Fair, equitable, objective and nondiscriminatory procedures for determining purchase priorities.

(2) The State board shall act on a county's program for purchasing agricultural conservation easements within 60 days of its receipt, and shall notify immediately the county in writing of approval or disapproval of its program in accordance with the criteria set forth in this subsection. Failure of the State board to act on the submission of a county program under this provision within 60 days of its receipt shall be deemed to constitute approval of the county program by the State board.

(e) Easement purchase.—

(1) The State board may reject the recommendation made by a county for purchase of an agricultural conservation easement whenever:

(i) The recommendation does not comply with a county program certified and approved by the State board for purchasing agricultural conservation easements.

(ii) Clear title cannot be conveyed.

(iii) The farmland which would be subject to the agricultural conservation easement is not located within a duly established agricultural security area established or recognized under this act.

(iv) The allocation of a county established pursuant to subsection (h) is exhausted or is insufficient to pay the purchase price.

(v) Compensation is not provided to owners of surface-mineable coal disturbed or affected by the creation of such easement.

(2) The State board shall act to approve or disapprove the recommendation by a county for purchase of an agricultural conservation easement within 60 days of its receipt.

(3) If the State board disapproves the recommendation by a county for purchase of an agricultural conservation easement, the county shall be given written notice of the disapproval within ten days of the decision of the State board. The written notice shall state the reason for the State board's disapproval of the recommendation.

(4) A decision of the State board issued under the authority of this subsection shall be an adjudication subject to the provisions of 2 Pa.C.S. (relating to administrative law and procedure).

(5) Failure of the State board to act on a recommendation by a county for purchase of an agricultural conservation easement within 60 days of its receipt shall be deemed to constitute approval by the State board.

(f) Valuation.—The State board or the county board, as the case may be, shall select and retain an independent licensed real estate appraiser to determine market value and farmland value. If the seller disagrees with the

appraisal made by the State or county board's appraiser, the seller shall have the right to select and retain a separate independent licensed real estate appraiser within 30 days of receipt of the appraisal of the State or county board's appraiser to determine market value and farmland value. The State board or the county board shall establish the agricultural value and the non-agricultural value of the property subject to the agricultural conservation easement.

(1) The agricultural value shall equal the sum of:

- (i) the farmland value determined by the seller's appraiser; and*
- (ii) one-half of the difference between the farmland value determined by the State or county board's appraiser and the farmland value determined by the seller's appraiser if the farmland value determined by the State or county board's appraiser exceeds the farmland value determined by the seller's appraiser.*

(2) The nonagricultural value shall equal the sum of:

- (i) the market value determined by the State or county board's appraiser; and*
- (ii) one-half of the difference between the market value determined by the seller's appraiser and the market value determined by the State or county board's appraiser, if the market value determined by the seller's appraiser exceeds the market value determined by the State or county board's appraiser.*

(g) Purchase price.—The price paid for purchase of an agricultural conservation easement in perpetuity shall not exceed the difference between the nonagricultural value and the agricultural value determined pursuant to subsection (f) at the time of purchase. The price paid for purchase of an easement for a term of 25 years shall not exceed one-tenth of the difference between the nonagricultural value and the agricultural value determined pursuant to subsection (f) at the time of purchase. The purchase price may be paid in a lump sum, in installments over a period of years, or in any other lawful manner of payment. If payment is to be made in installments or another deferred method, the person selling the easement may receive, in addition to the selling price, interest in an amount or at a rate set forth in the agreement of purchase, and final payment shall be made within, and no later than, five years from the date the agricultural conservation easement purchase agreement was executed.

(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.

(1) As used in this subsection, the following words and phrases shall have the meanings given to them in this paragraph unless the context clearly indicates otherwise:

- (i) "Adjusted weighted transfer tax revenues." An amount equal to the weighted transfer tax revenues of a county divided by the sum of the weighted transfer tax revenues of all counties except counties of the first class.*

(ii) *“Annual agricultural production.”* The total dollar volume of sales of livestock, crops and agricultural products according to the most recent *Annual Crop and Livestock Summary* published by the Pennsylvania Agricultural Statistics Service.

(iii) *“Annual easement purchase threshold.”* An amount annually determined by the State board which equals at least \$10,000,000.

(iv) *“Average realty transfer tax revenues.”* The total annual realty transfer tax revenues collected in all counties, except counties of the first class, divided by 66.

(v) *“Realty transfer tax revenues.”* The tax imposed and collected under section 1102-C of the act of March 4, 1971 (P.L.6, No.2), known as the *“Tax Reform Code of 1971.”*

(vi) *“Weighted transfer tax revenues.”* An amount equal to the total annual realty transfer tax revenues collected in a county divided by the sum of the total annual realty transfer tax revenues collected in all counties except counties of the first class which does not exceed three times the average realty transfer tax revenues.

(2) *An annual allocation shall be made to each county, except counties of the first class, for the purchase of agricultural conservation easements by the Commonwealth at the beginning of the county fiscal year which equals 50% of the annual easement purchase threshold multiplied by the adjusted weighted transfer tax revenues of the county for the preceding calendar year.*

(3) *If the aggregate annual allocation under this paragraph to all eligible counties does not exceed 50% of the annual easement purchase threshold, an additional annual allocation from 50% of the annual easement purchase threshold shall be made to a county, except a county of the first class, at the beginning of the county fiscal year for the joint purchase of agricultural conservation easements by the Commonwealth and a county. The additional annual allocation under this paragraph shall equal the sum of:*

(i) *The annual appropriation of local moneys by a county for the purchase of agricultural conservation easements which does not exceed the average annual allocation under paragraph (2) multiplied by four.*

(ii) *The annual appropriation of local moneys by a county for the purchase of agricultural conservation easements which does not exceed the average annual allocation under paragraph (2) multiplied by four, if the county has an annual agricultural production which equals at least 2% of the total annual agricultural production of the Commonwealth for the same year.*

(4) *If the aggregate annual allocation under paragraph (3) to all eligible counties would exceed 50% of the annual easement purchase threshold, paragraph (3) shall not apply, and an additional annual allocation shall be made under this paragraph at the beginning of the county fiscal year for the joint purchase of agricultural conservation easements by the Commonwealth and a county, except a county of the first class. The additional annual allocation to a county under this paragraph shall equal 50%*

of the annual easement purchase threshold multiplied by a percentage equal to the annual appropriation of local moneys appropriated by the county for the purchase of agricultural conservation easements divided by the aggregate of local moneys appropriated by all eligible counties for the purchase of agricultural conservation easements and in all cases shall not exceed the average annual allocation under paragraph (2) multiplied by four.

(5) An additional annual allocation shall be made to a county, except a county of the first class, from the amount by which 50% of the annual easement purchase threshold exceeds the total allocations made under paragraph (3) or (4), as the case may be, as follows:

(i) An additional annual allocation shall be made for the joint purchase of agricultural conservation easements by the Commonwealth and a county which equals six-tenths of the amount by which 50% of the annual easement purchase threshold exceeds the total allocations made under paragraph (3) or (4), as the case may be, multiplied by a percentage equal to the annual appropriation of local moneys appropriated by the county for the purchase of agricultural conservation easements divided by the aggregate of local moneys appropriated by all eligible counties for the purchase of agricultural conservation easements.

(ii) An additional annual allocation shall be made for the purchase of agricultural conservation easements by the Commonwealth which equals four-tenths of the amount by which 50% of the annual easement purchase threshold exceeds the total allocations made under paragraph (3) or (4), as the case may be, multiplied by the adjusted weighted transfer tax revenues of the county for the preceding calendar year.

(6) The allocation of a county shall be adjusted for purchases of agricultural conservation easements made with moneys from the county's allocation, for all costs, except administrative costs, incurred by the Commonwealth or a county incident to the purchase of agricultural conservation easements and for the costs of reimbursing nonprofit land conservation organizations for expenses incurred in acquiring and transferring agricultural conservation easements to the Commonwealth or county. No purchase of an agricultural conservation easement shall be made with State moneys allocated to a county unless the amount of the purchase price is equal to or less than the adjusted allocation or the county pays the portion of the purchase price which represents the difference between the purchase price and the adjusted allocation.

(7) The first three annual allocations to a county under paragraphs (3), (4) and (5)(i) 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 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).

(9) The allocation made to a county under this subsection shall be used for the purchase of agricultural conservation easements in perpetuity: Provided, That no more than 30% of such allocation may be used at the option of a county for the purchase of agricultural conservation easements for a term of 25 years in the manner provided for in this act.

Section 14.2. Agricultural Conservation Easement Purchase Fund.

(a) Purpose of fund.—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 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 non-profit land conservation organizations for expenses incurred in acquiring and transferring agricultural conservation easements to the Commonwealth or a county.

(b) Interfund transfers authorized.—

(1) Whenever the cash balance and the current estimated receipts of the Agricultural Conservation Easement Purchase Fund shall be insufficient at any time during any State fiscal year to meet promptly the obligations of the Commonwealth from such fund, the State Treasurer is hereby authorized and directed, from time to time during such fiscal year, to transfer from the General Fund to the Agricultural Conservation Easement Purchase Fund such sums as the Governor directs, but in no case less than the amount necessary to meet promptly the obligations to be paid from such fund nor more than an amount which is the smallest of:

(i) the difference between the amount of debt authorized to be issued under the authority of this act and the aggregate principal amount of bonds and notes (not including refunding bonds and replacement notes) issued; and

(ii) the difference between the aggregate principal amount of bonds and notes permitted under section 14.3(e) to be issued during a State fiscal year and the aggregate principal amount of bonds and notes (not including refunding bonds and replacement notes) issued during such State fiscal year.

Any sums so transferred shall be available only for the purposes for which funds are appropriated from the Agricultural Conservation Easement Purchase Fund. Such transfers shall be made hereunder upon warrant of the State Treasurer upon requisition of the Governor.

(2) In order to reimburse the General Fund for moneys transferred from such fund under section 14.2(b)(1), there shall be transferred moneys to the General Fund from the Agricultural Conservation Easement Purchase Fund from proceeds obtained from bonds and notes issued under the authority of this act or from other available funds in such amounts and at such times as the Governor shall direct. Such retransfers shall be made upon warrant of the State Treasurer upon requisition of the Governor.

Section 14.3. Commonwealth indebtedness.

(a) Borrowing authorized.—

(1) Pursuant to the provisions of section 7(a)(3) of Article VIII of the Constitution of Pennsylvania and the referendum approved by the electorate, the issuing officials are authorized and directed to borrow, on the credit of the Commonwealth, money not exceeding in the aggregate the sum of \$100,000,000, not including money borrowed to refund outstanding bonds, notes or replacement notes, as may be found necessary to carry out the purposes of this act.

(2) As evidence of the indebtedness authorized in this act, general obligation bonds of the Commonwealth shall be issued, from time to time, to provide moneys necessary to carry out the purposes of this act for such total amounts, in such form, in such denominations and subject to such terms and conditions of issue, redemption and maturity, rate of interest and time of payment of interest as the issuing officials direct, except that the latest stated maturity date shall not exceed 20 years from the date of the first obligation issued to evidence the debt.

(3) All bonds and notes issued under the authority of this act shall bear facsimile signatures of the issuing official and a facsimile of the great seal of the Commonwealth and shall be countersigned by a duly authorized officer of a duly authorized loan and transfer agent of the Commonwealth.

(4) All bonds and notes issued in accordance with the provisions of this section shall be direct obligations of the Commonwealth, and the full faith and credit of the Commonwealth are hereby pledged for the payment of the interest thereon, as it becomes due, and the payment of the principal at maturity. The principal of and interest on the bonds and notes shall be payable in lawful money of the United States.

(5) All bonds and notes issued under the provisions of this section shall be exempt from taxation for State and local purposes except as may be provided under Article XVI of the act of March 4, 1971 (P.L. 6, No.2), known as the "Tax Reform Code of 1971."

(6) *The bonds may be issued as coupon bonds or registered as to both principal and interest as the issuing officials may determine. If interest coupons are attached, they shall contain the facsimile signature of the State Treasurer.*

(7) *The issuing officials shall provide for the amortization of the bonds in substantial and regular amounts over the term of the debt so that the bonds of each issue allocated to the programs to be funded from the bond issue shall mature within a period not to exceed the appropriate amortization period for each program as specified by the issuing officials but in no case in excess of 20 years. The first retirement of principal shall be stated to mature prior to the expiration of a period of time equal to one-tenth of the time from the date of the first obligation issued to evidence the debt to the date of the expiration of the term of the debt. Retirements of principal shall be regular and substantial if made in annual or semiannual amounts whether by stated serial maturities or by mandatory sinking fund retirements.*

(8) *The issuing officials are authorized to provide by resolution, for the issuance of refunding bonds for the purpose of refunding any debt issued under the provisions of this act and then outstanding, either by voluntary exchange with the holders of the outstanding debt or to provide funds to redeem and retire the outstanding debt with accrued interest, any premium payable thereon and the costs of issuance and retirement of the debt, at maturity or at any call date. The issuance of the refunding bonds, the maturities and other details thereof, the rights of the holders thereof and the duties of the issuing officials in respect thereto shall be governed by the provisions of this section, insofar as they may be applicable. Refunding bonds, which are not subject to the aggregate limitation of \$100,000,000 of debt to be issued pursuant to this act, may be issued by the issuing officials to refund debt originally issued or to refund bonds previously issued for refunding purposes.*

(9) *Whenever any action is to be taken or decision made by the Governor, the Auditor General and the State Treasurer acting as issuing officials and the three officers are not able unanimously to agree, the action or decision of the Governor and either the Auditor General or the State Treasurer shall be binding and final.*

(10) *Issuing officials shall mean the Governor, the Auditor General and the State Treasurer.*

(b) *Sale of bonds.—*

(1) *Whenever bonds are issued, they shall be offered for sale at not less than 98% of the principal amount and accrued interest and shall be sold by the issuing officials to the highest and best bidder or bidders after due public advertisement on the terms and conditions and upon such open competitive bidding as the issuing officials shall direct. The manner and character of the advertisement and the time of advertising shall be prescribed by the issuing officials. No commission shall be allowed or paid for the sale of any bonds issued under the authority of this act.*

(2) *Any portion of any bond issue so offered and not sold or subscribed for at public sale may be disposed of by private sale by the issuing officials in such manner and at such prices, not less than 98% of the principal amount and accrued interest, as the Governor shall direct. No commission shall be allowed or paid for the sale of any bonds issued under the authority of this act.*

(3) *When bonds are issued from time to time, the bonds of each issue shall constitute a separate series to be designated by the issuing officials or may be combined for sale as one series with other general obligation bonds of the Commonwealth.*

(4) *Until permanent bonds can be prepared, the issuing officials may in their discretion issue, in lieu of permanent bonds, temporary bonds in such form and with such privileges as to registration and exchange for permanent bonds as may be determined by the issuing officials.*

(5) *The proceeds realized from the sale of bonds and notes, except refunding bonds and replacement notes, under the provisions of this act shall be paid into a special fund in the State Treasury to be known as the Agricultural Conservation Easement Purchase Fund and are specifically dedicated to the purposes of the referendum of July 13, 1987, as implemented by this act. The proceeds shall be paid by the State Treasurer periodically to those departments, agencies or authorities authorized to expend them at such times and in such amounts as may be necessary to satisfy the funding needs of the department, agency or authority. The proceeds of the sale of refunding bonds and replacement notes shall be paid to the State Treasurer and applied to the payment of principal, the accrued interest and premium, if any, and cost of redemption of the bonds and notes for which such obligations shall have been issued.*

(6) *Pending their application for the purposes authorized, moneys held or deposited by the State Treasurer may be invested or reinvested as are other funds in the custody of the State Treasurer in the manner provided by law. All earnings received from the investment or deposit of such funds shall be paid into the State Treasury to the credit of the fund. Such earnings in excess of bond discounts allowed, expenses paid for the issuance of bonds and notes, and interest arbitrage rebates due to the Federal Government, shall be transferred annually to the Agricultural Conservation Easement Purchase Sinking Fund.*

(7) *The Auditor General shall prepare the necessary registry book to be kept in the office of the duly authorized loan and transfer agent of the Commonwealth for the registration of any bonds, at the request of owners thereof, according to the terms and conditions of issue directed by the issuing officials.*

(8) *There is hereby appropriated to the State Treasurer from the fund as much money as may be necessary for all costs and expenses in connection with the issue of and sale and registration of the bonds and notes in connection with this act and the payment of interest arbitrage rebates or proceeds of such bonds and notes.*

(c) Temporary financing authorization.—

(1) Pending the issuance of bonds of the Commonwealth as authorized, the issuing officials are hereby authorized, in accordance with the provisions of this act and on the credit of the Commonwealth, to make temporary borrowings not to exceed three years in anticipation to the issue of bonds in order to provide funds in such amounts as may, from time to time, be deemed advisable prior to the issue of bonds. In order to provide for and in connection with such temporary borrowings, the issuing officials are hereby authorized in the name and on behalf of the Commonwealth to enter into any purchase, loan or credit agreement, or agreements, or other agreement or agreements with any banks or trust companies or other lending institutions, investment banking firms or persons in the United States having power to enter into the same, which agreements may contain such provisions not inconsistent with the provisions of this act as may be authorized by the issuing officials.

(2) All temporary borrowings made under the authorization of this section shall be evidenced by notes of the Commonwealth, which shall be issued, from time to time, for such amounts not exceeding in the aggregate the applicable statutory and constitutional debt limitation, in such form and in such denominations and subject to terms and condition of sale and issue, prepayment or redemption and maturity, rate or rates of interest and time of payment of interest as the issuing officials shall authorize and direct and in accordance with this act. Such authorization and direction may provide for the subsequent issuance of replacement notes to refund outstanding notes or replacement notes, which replacement notes shall, upon issuance thereof, evidence such borrowing, and may specify such other terms and conditions with respect to the notes and replacement notes thereby authorized for issuance as the issuing officials may determine and direct.

(3) When the authorization and direction of the issuing officials provide for the issuance of replacement notes, the issuing officials are hereby authorized in the name and on behalf of the Commonwealth to issue, enter into or authorize and direct the State Treasurer to enter into agreements with any banks, trust companies, investment banking firms or other institutions or persons in the United States having the power to enter the same:

(i) To purchase or underwrite an issue or series of issues of notes.

(ii) To credit, to enter into any purchase, loan or credit agreements, to draw moneys pursuant to any such agreements on the terms and conditions set forth therein and to issue notes as evidence of borrowings made under any such agreements.

(iii) To appoint as issuing and paying agent or agents with respect to notes.

(iv) To do such other acts as may be necessary or appropriate to provide for the payment, when due, of the interest on and the principal of such notes.

Such agreements may provide for the compensation of any purchasers or underwriters of notes or replacement notes by discounting the purchase price of the notes or by payment of a fixed fee or commission at the time of issuance thereof, and all other costs and expenses, including fees for agreements related to the notes, issuing and paying agent costs and costs and expenses of issuance, may be paid from the proceeds of the notes.

(4) When the authorization and direction of the issuing officials provide for the issuance of replacement notes, the State Treasurer shall, at or prior to the time of delivery of these notes or replacement notes, determine the principal amounts, dates of issue, interest rate or rates (or procedures for establishing such rates from time to time), rates of discount, denominations and all other terms and conditions relating to the issuance and shall perform all acts and things necessary to pay or cause to be paid, when due, all principal of and interest on the notes being refunded by replacement notes and to assure that the same may draw upon any moneys available for that purpose pursuant to any purchase, loan or credit agreements established with respect thereto, all subject to the authorization and direction of the issuing officials.

(5) Outstanding notes evidencing such borrowings may be funded and retired by the issuance and sale of the bonds of the Commonwealth as hereinafter authorized. The refunding bonds must be issued and sold not later than a date three years after the date of issuance of the first notes evidencing such borrowings to the extent that payment of such notes has not otherwise been made or provided for by sources other than proceeds of replacement notes.

(6) The proceeds of all such temporary borrowing shall be paid to the State Treasurer to be held and disposed of in accordance with the provisions of this act.

(d) Debt retirement.—

(1) All bonds issued under the authority of this act shall be redeemed at maturity, together with all interest due, from time to time, on the bonds, and these principal and interest payments shall be paid from the Agricultural Conservation Easement Purchase Sinking Fund, which is hereby created. For the specific purpose of redeeming the bonds at maturity and paying all interest thereon in accordance with the information received from the Governor, the General Assembly shall appropriate moneys to the Agricultural Conservation Easement Purchase Sinking Fund for the payment of interest on the bonds and notes and the principal thereof at maturity. All moneys paid into the Agricultural Conservation Easement Purchase Sinking Fund and all of the moneys not necessary to pay accruing interest shall be invested by the State Treasurer in such securities as are provided by law for the investment of the sinking funds of the Commonwealth.

(2) The State Treasurer, with the approval of the Governor, is authorized at any time to use any of the moneys in the fund not necessary for the purposes of the referendum of November 3, 1987, for the purchase and retirement of all or any part of the bonds and notes issued pursuant to the

authorization of this act. In the event that all or any part of the bonds and notes are purchased, they shall be canceled and returned to the loan and transfer agent as canceled and paid bonds and notes, and thereafter all payments of interest thereon shall cease and the canceled bonds, notes and coupons, together with any other canceled bonds, notes and coupons, shall be destroyed as promptly as possible after cancellation but not later than two years after cancellation. A certificate evidencing the destruction of the canceled bonds, notes and coupons shall be provided by the loan and transfer agent to the issuing officials. All canceled bonds, notes and coupons shall be so marked as to make the canceled bonds, notes and coupons nonnegotiable.

(3) The State Treasurer shall determine and report to the Secretary of the Budget by November 1 of each year, the amount of money necessary for the payment of interest on outstanding obligations and the principal of the obligations, if any, for the following fiscal year and the times and amounts of the payments. It shall be the duty of the Governor to include in every budget submitted to the General Assembly full information relating to the issuance of bonds and notes under the provisions of this act and the status of the Agricultural Conservation Easement Purchase Sinking Fund of the Commonwealth for the payment of interest on the bonds and notes and the principal thereof at maturity.

(4) The General Assembly shall appropriate an amount equal to such sums as may be necessary to meet repayment obligations for principal and interest for deposit into the Agricultural Conservation Easement Purchase Sinking Fund.

(e) Annual limitation on debt obligations issued.—Bonds and notes (not including refunding bonds or replacement notes), as authorized herein, shall not be issued in the aggregate principal amount of more than \$20,000,000 during any one State fiscal year. Any interfund transfers made or to be made pursuant to section 14.2(b)(1) during any State fiscal year may not be made, or cause to be outstanding at any time, in any amount greater than the difference between \$20,000,000 and the aggregate principal amount of bonds and notes (not including refunding bonds or replacement notes) issued under the authority of this act during such State fiscal year.

(f) Expiration.—Authorization to issue bonds and notes (not including refunding bonds and replacement notes) for the purposes of this act shall expire ten years from the effective date of this section.

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:

(1) The location of agricultural security areas and agricultural conservation easements in the Commonwealth.

(2) The number of acres throughout the Commonwealth which are located within agricultural security areas.

(3) The number of acres throughout the Commonwealth which are subject to agricultural conservation easements.

(4) The number of agricultural conservation easements in the Commonwealth.

(5) The number of acres included within each agricultural conservation easement throughout the Commonwealth.

(6) The number and value of agricultural conservation easements purchased by the Commonwealth, including the number and value of purchases made during the preceding calendar and the preceding fiscal year of the Commonwealth.

(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.

(8) The identity of counties participating in the State program for purchasing agricultural conservation easements.

(9) The dollar value of the annual appropriation made by counties for the purchase of agricultural conservation easements.

(10) The quality of the farmlands subject to agricultural conservation easement, including the soil classifications and productivity of the farmlands.

(11) The nature scope and extent of development activity within the area where agricultural conservation easements have been purchased.

(12) The nature and extent of conservation practices and best land management practices, including, but not limited to, soil erosion and sedimentation control and nutrient management practices, which are practiced on farmlands subject to agricultural conservation easements.

(13) The total number of recommendations filed by counties for purchase of agricultural conservation easements and the number approved and disapproved, and the reasons for disapproval.

Section 4. The sum of \$75,000, or as much thereof as may be necessary, is hereby appropriated to the Department of Agriculture for administering the program authorized by section 14.1 of the act.

Section 5. This act shall take effect in 60 days.

APPROVED—The 14th day of December, A. D. 1988.

ROBERT P. CASEY