

No. 2001-14

AN ACT

HB 101

Amending the act of June 30, 1981 (P.L.128, No.43), entitled "An act authorizing the creation of agricultural areas," further defining "agricultural conservation easement" and "agricultural production"; defining "parcel"; further providing for agricultural security areas and for purchase of agricultural conservation easements; providing for a supplemental agricultural conservation easement purchase program; and making a repeal.

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

Section 1. The definitions of "agricultural conservation easement" and "agricultural production" in section 3 of the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law, amended November 23, 1994 (P.L.621, No.96), are amended and the section is amended by adding a definition to read:

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section, unless the context clearly indicates otherwise:

* * *

"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] *a parcel* 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 shall be granted in perpetuity as the equivalent of covenants running with the land. The exercise or failure to exercise any right granted by the easement shall not be deemed to be management or control of activities at the site for purposes of enforcement of the act of October 18, 1988 (P.L.756, No.108), known as the "Hazardous Sites Cleanup Act."

"Agricultural production." The production for commercial purposes of crops, livestock and 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. *The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government.*

* * *

"Parcel." *A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be*

located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with either the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

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Section 2. Section 5(a.2) of the act, amended November 23, 1994 (P.L.648, No.100), is amended to read:

Section 5. Agricultural security areas.

* * *

(a.2) Proposals for agricultural security areas in more than one local government unit.—[**IF**]

(1) Except as provided in paragraph (2), if the land included in a proposal for an agricultural security area is situated in more than one local government unit, the following shall apply:

(i) 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.

(ii) The governing bodies may cooperate in the review of a proposed agricultural security area and may provide joint public notices, a joint agricultural security area advisory committee and a joint public hearing on the security area.

(iii) 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, including land subject to paragraph (2), 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 250 acres and that such approved portion meets all other requirements imposed under this act for agricultural security areas.

(2) Automatic inclusion shall be as follows:

(i) All land which is part of a parcel of farmland included in the proposal and transected by the dividing line between two local government units shall automatically become part of the agricultural security area if:

(A) the majority of the viable agricultural land of the parcel is located within the proposed agricultural security area; and

(B) the local government unit in which the minority of the viable agricultural land of the parcel is located has not approved an agricultural security area.

(ii) The governing body which approves the agricultural security area containing the land under subparagraph (i)(A) is responsible for recording, filing and notification under section 8 for the land added under this paragraph.

* * *

Section 3. Section 14.1(b) introductory paragraph and (2), (b.1)(4), (d)(1), (e)(1) and (g) of the act, amended or added November 23, 1994 (P.L.621, No.96), November 23, 1994 (P.L.648, No.100) and December 21, 1998 (P.L.1056, No.138), are amended to read:

Section 14.1. Purchase of agricultural conservation easements.

* * *

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

* * *

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

(i) (A) To adopt rules and regulations for the administration of a [countywide] *county* 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.

(B) To include in such rules and regulations, standards and procedures for the selection or purchase of agricultural conservation easements by the county solely or jointly with either the Commonwealth or a local government unit, or both, on that portion of a parcel which is not within an agricultural security area if all of the following criteria are complied with:

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

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

notification outlined in section 8(d) and (g) concerning land added to the agricultural security area pursuant to this clause.

(C) To include in such rules and regulations, standards and procedures for the selection or purchase of agricultural conservation easements by the county solely or jointly with either the Commonwealth or a local government unit, or both, on that portion of a parcel located in an adjoining county if all of the following criteria are complied with:

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

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

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

(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 *either* within agricultural security areas *or pursuant to the criteria set forth in subparagraph (i)*.

(v) To use moneys appropriated by the county governing body from the county general fund to hire staff and administer the [countywide] county 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 *either* within agricultural security areas *or pursuant to the criteria set forth in subparagraph (i)*.

(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.

(xiv) To submit to the State board applications for agricultural conservation easements in accordance with the guidebook authorized under subsection (a)(3)(xv).

(xv) To exercise primary enforcement authority with respect to the following:

(A) Agricultural conservation easements within the county.

(B) Agricultural conservation easements acquired pursuant to the criteria set forth in subparagraph (i), including any portion of such an agricultural conservation easement extending into an adjoining county.

* * *

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

* * *

(4) The local government unit may purchase an agricultural conservation easement, provided that all of the following apply:

(i) The agricultural conservation easement is located within an agricultural security area of at least 500 acres *or the easement purchase is a joint purchase with either a county or both a county*

and the Commonwealth pursuant to the criteria set forth in subsection (b)(2)(i).

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

(iii) The local government unit shall participate with the county board in complying with paragraph (5) for recording any agricultural conservation easement purchased by the local government unit.

* * *

(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 classification and soil productivity ratings. Farmland considered should include soils which do not have the highest soil classifications and soil productivity ratings but which are conducive to producing crops unique to the area.

(ii) The likelihood that the farmlands would be converted to nonagricultural use unless subject to an agricultural conservation easement. Areas in the county devoted primarily to agricultural use where development is occurring or is likely to occur in the next 20 years should be identified. 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.

(ii.1) Proximity of the farmlands subject to proposed easements to other agricultural [lands] *parcels* in the county which are subject to agricultural conservation easements.

(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.

* * *

(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 *either* not located within a duly established agricultural security area of 500 or more acres established or recognized under this act *or not in compliance with the criteria set forth in subsection (b)(2)(i)*.

(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.

* * *

(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, unless the difference is less than the State or county boards' original appraised value in which case the State or county boards' original easement value may be offered. [However, under no circumstances shall the price paid for purchase of an agricultural conservation easement in perpetuity exceed \$10,000 per acre of State funds.] 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 of all State money shall be made within, and no later than, five years from the date the agricultural conservation easement purchase agreement was fully executed. The county may provide for payments on an installment or other deferred basis and for interest payments by investing its allocation of State money for purchases approved by the State board under subsection (h)(11) in securities deposited into an irrevocable escrow account or in another manner provided by law.

* * *

Section 4. The act is amended by adding a section to read:

Section 14.5. Supplemental Agricultural Conservation Easement Purchase Program.

(a) *Establishment.*—*There is established the Supplemental Agricultural Conservation Easement Purchase Program. Funds appropriated for the program shall be allocated by the State board in accordance with the following:*

(1) *Except as provided in paragraphs (2) and (3), funds may be allocated to eligible counties in accordance with section 14.1(h)(8.1) and (8.2) for any purpose authorized under this act.*

(2) *Up to \$500,000 may be allocated to provide technical assistance to eligible counties or groups of eligible counties regarding long-term installment purchases of agricultural conservation easements in this Commonwealth. An eligible county must file an application with the*

State board to receive reimbursement or payment under this paragraph. Technical assistance may include department contracts with individuals with legal or financial expertise to assist eligible counties. Funds may be used for administrative expenses of the department incurred under this paragraph.

(3) Up to \$500,000 may be allocated to reimburse land trusts for expenses incurred to acquire agricultural conservation easements in this Commonwealth. Eligible expenses include the cost of appraisals, legal services, title searches, document preparation, title insurance, closing fees and survey costs. Reimbursement shall be limited to \$5,000 per easement. Funds may be used for administrative expenses of the department incurred under this paragraph. In order to be eligible under this paragraph, a land trust must:

(i) be a tax-exempt institution under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) and include the acquisition of agricultural or other conservation easements in its stated purpose;

(ii) register with the State board;

(iii) coordinate with the farmland preservation activities of the county if the farmland preservation activity occurs in an eligible county or coordinate with the activities of the State board if the activity does not occur in an eligible county; and

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

(b) Account.—

(1) An account is established in the fund, to be known as the Supplemental Agricultural Conservation Easement Purchase Account. All funds appropriated to the Supplemental Agricultural Conservation Easement Purchase Program shall be deposited in the account for allocation under this section.

(2) Funds allocated under subsection (a)(1) which are unexpended or unencumbered on June 30, 2001, shall be restored to the account. If no funds are appropriated to the program by June 30, 2001, the restored funds shall be transferred to the fund.

(c) Local appropriation.—Within 60 days of the effective date of any additional appropriations to the program, eligible counties shall be authorized to appropriate additional local money for the purchase of agricultural conservation easements for the current county fiscal year. This additional local money shall be included when determining each eligible county's share of money allocated under this section for supplemental agricultural easement purchase programs under methodologies in section 14.1(h)(8.1) and (8.2).

Section 5. Notwithstanding any provisions of law to the contrary, any agricultural conservation easement purchased solely by a county prior to the effective date of this section, which easement covered that portion of a farm parcel bisected by a county border located within the purchasing county, shall be considered eligible for repurchase by the Commonwealth or by the Commonwealth in conjunction with county or local programs. The value of such an easement for the purposes of repurchase by the Commonwealth or repurchase by the combined moneys of the Commonwealth and a county or municipality, or both, shall be calculated as the sum of the original easement purchase price plus both administrative costs incurred by the county to purchase the original easement and administrative costs incurred by the county and associated with the repurchase. Any moneys contributed by the Commonwealth for repurchase of such an easement shall be paid to the county as the current easement holder and applied to the purchase of other agricultural conservation easements.

Section 6. Section 1716 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

Section 7. The following shall apply to funding:

(1) The addition of section 14.5 of the act shall be deemed a continuation of section 1716 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(2) Section 6 of this act shall not affect funding for the Supplemental Agricultural Conservation Easement Purchase Program.

Section 8. Within 90 days of the effective date of this section, the Department of Agriculture shall propose regulations implementing the provisions of this act other than section 2 (section 5(a.2)).

Section 9. This act shall take effect in 30 days.

APPROVED—The 30th day of May, A.D. 2001.

THOMAS J. RIDGE