

## No. 2006-4

## AN ACT

## HB 87

Amending the act of January 19, 1968 (1967 P.L.992, No.442), entitled, as amended, "An act authorizing the Commonwealth of Pennsylvania and the local government units thereof to preserve, acquire or hold land for open space uses," defining "municipal corporation"; further providing for property acquired in fee simple and for local taxing option; and making an editorial change.

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

Section 1. Sections 2, 7 and 7.1 of the act of January 19, 1968 (1967 P.L.992, No.442), entitled, as amended, "An act authorizing the Commonwealth of Pennsylvania and the local government units thereof to preserve, acquire or hold land for open space uses," amended or added December 18, 1996 (P.L.994, No.153), are amended to read:

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

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

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

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

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

(5) "Local government unit."

(i) A county;

(ii) a county authority having among the purposes for which it was created the achievement of one or more of the open space benefits set forth in this section;

(iii) a municipal corporation [**as defined in 1 Pa.C.S. § 1991 (relating to definitions)**] or any similar general purpose unit of local government; or

(iv) any unit created by joint action of two or more local government units which is now or shall hereafter be authorized to be created by the General Assembly, including cooperation by two or more local government units in accordance with the *former* act of July 12, 1972 (P.L.762, No.180), referred to as the Intergovernmental Cooperation Law[,], *or 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation).*

*(5.1) "Municipal corporation." A city, borough, incorporated town or township.*

(6) "Planning commission." A local board, commission or agency which has been designated by the governing body of a local government unit to establish and foster a comprehensive plan for land management and development with the local government unit.

(7) "Transferable development right" or "TDR." The attaching of development rights to specified lands which are desired by a local government unit to be kept undeveloped, but permitting those rights to be transferred from those lands so that the development potential which they represent may occur on other lands where more intensive development is deemed to be appropriate.

Section 7. Property Acquired in Fee Simple.—If the owner of the interests in real property to be acquired pursuant to the provisions of this act prefers to have the Commonwealth or the local government unit acquire the property in fee simple, the Commonwealth or the local government unit shall be required to acquire the property in fee simple. All real property acquired in fee simple by the Commonwealth, through either the Department of Conservation and Natural Resources or the Department of Agriculture[, or by a local government unit,] under the provisions of this act, shall be offered for resale publicly in the manner provided by law within two years of the date of acquisition, subject to restrictive covenants or easements limiting the land to such open space uses as may be specified by the designating department or agency in accordance with section 6 hereof, and consistent with the resource, recreation, or land use plan established in accordance with section 4 hereof. In the case of the Commonwealth, such resales may be made without specific authority of the General Assembly and shall be through the Department of General Services at public sale in the manner provided by law.

Section 7.1. Local Taxing Options.—(a) A local government unit, excluding counties and county authorities, may by ordinance impose, in addition to the statutory rate limits on real estate taxes set forth in the municipal code of that local government unit, a tax on real property not exceeding the millage authorized by referendum under this subsection. In the alternative, a local government unit, excluding counties and county authorities, may by ordinance impose, in addition to the earned income tax rate limit set forth in the act of December 31, 1965 (P.L.1257, No.511), known as “The Local Tax Enabling Act,” a tax on the earned income of the residents of that local government unit not exceeding the rate authorized by referendum under this subsection. Revenue from the levy shall be used to retire the indebtedness incurred in purchasing interests in real property or in making additional acquisitions of real property for the purpose of securing an open space benefit or benefits under the provisions of this act or the act of June 30, 1981 (P.L.128, No.43), known as the “Agricultural Area Security Law.” The local taxing option authorized by this subsection shall not be exercised unless the governing body of the local government unit shall by ordinance first provide for a referendum on the question of the imposition at a specific rate of the additional tax to be imposed and a majority of those voting on the referendum question vote in favor of the imposition of the tax. The ordinance of the governing board of the local government unit providing for a referendum on the question shall be filed with the county board of elections. The referendum shall be governed by the provisions of the act of June 3, 1937 (P.L.1333, No.320), known as the “Pennsylvania Election Code.” The election official shall cause the question to be submitted to the electors of the local government unit at the next primary, general or municipal election occurring not less than the thirteenth Tuesday following the filing of the ordinance with the county board of elections. At such election, the question shall be submitted to the voters in the same manner as other questions are submitted under the provisions of the “Pennsylvania Election Code.” The question to be placed upon the ballot shall be framed in the following form:

Do you favor the imposition of a (describe tax in millage or rate) by (local government unit) to be used to (purpose)?

**(b) [The board of directors of a school district may by resolution exempt the following real property from further millage increases imposed on real property:**

**(1) those whose open space property interests have been acquired by a local government unit under this act;**

**(2) real property which is subject to an easement acquired under the act of June 30, 1981 (P.L.128, No.43), known as the “Agricultural Area Security Law”; and**

**(3) real property whose TDRs have been transferred and retired by a local government unit without their development potential having occurred on other lands; provided that the]**

**(1) Any of the following categories of real property may be exempted from further millage increases:**

**(i) Real property in which the open space property interests have been acquired by a local government unit in accordance with this act.**

**(ii) Real property that is subject to an easement acquired in accordance with the act of June 30, 1981 (P.L.128, No.43), known as the "Agricultural Area Security Law."**

**(iii) Real property from which TDRs have been transferred and retired by a local government unit without their development potential having occurred on other lands.**

**(2) The exemption from further millage increases authorized by clause (1) shall become effective only if the governing body of each taxing district that imposes a tax on the real property approves the exemption either by ordinance in the case of a county or municipal corporation or by resolution in the case of a school district.**

**(3) The exemption from further millage increases for real property as provided for in [clause (1), (2) or (3) of] this subsection shall be authorized only for real property qualifying for such exemption under the provisions of section 2(b)(1) of Article VIII of the Constitution of Pennsylvania. [If the board so resolves]**

**(4) If the governing body of each taxing district so resolves, the millage freeze authorized herein shall apply to all eligible real property, whether the real property met the criteria of this subsection prior to or subsequent to the date of the *ordinances and* resolution imposing the millage freeze. For prior acquisitions, the date on which the millage rate shall be frozen is the date [of the resolution] *that the last of the required ordinances or resolution becomes effective*. For subsequent acquisitions, the date on which the millage rate shall be frozen is the date the local government unit completes the acquisition. The [school district] *governing body of each taxing district* shall give prompt notice to the appropriate tax collection agent of the exact amount of the millage, the date it was frozen and each parcel to which the freeze applies.**

**(5) The exemptions granted under this act shall not be considered by the State Tax Equalization Board in deriving the market value of school district real property so as to reduce the subsidy to that school district or to increase the subsidy to any other school district.**

Section 2. This act shall take effect in 60 days.

APPROVED—The 2nd day of February, A.D. 2006.

EDWARD G. RENDELL