

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

**SENATE BILL**

**No. 723**      Session of  
2005

---

INTRODUCED BY WENGER, WAUGH, VANCE, ERICKSON, MUSTO, RAFFERTY,  
GREENLEAF, EARLL, BROWNE, O'PAKE, LEMMOND, PILEGGI, PICCOLA,  
ORIE, ROBBINS, FERLO, WONDERLING, ARMSTRONG, THOMPSON AND  
KASUNIC, JUNE 3, 2005

---

SENATE AMENDMENTS TO HOUSE AMENDMENTS, MAY 1, 2006

---

AN ACT

1 Amending the act of June 30, 1981 (P.L.128, No.43), entitled "An  
2 act authorizing the creation of agricultural areas," further  
3 providing for statement of legislative findings, for  
4 definitions, for limitation on certain governmental actions,  
5 for purchase of agricultural conservation easements, for the  
6 Agricultural Conservation Easement Purchase Fund, for  
7 legislative report and for the Land Trust Reimbursement  
8 Program; providing for acquisitions by donation; and  
9 abrogating a regulation.

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

12 Section 1. Section 2 of the act of June 30, 1981 (P.L.128,  
13 No.43), known as the Agricultural Area Security Law, is amended  
14 by adding a paragraph to read:

15 Section 2. Statement of legislative findings.

16 It is the declared policy of the Commonwealth to conserve and  
17 protect and to encourage the development and improvement of its  
18 agricultural lands for the production of food and other  
19 agricultural products. It is also the declared policy of the

1 Commonwealth to conserve and protect agricultural lands as  
2 valued natural and ecological resources which provide needed  
3 open spaces for clean air, as well as for aesthetic purposes.  
4 Article VIII, section 2 of the Constitution of Pennsylvania  
5 provides that the General Assembly may, by law, establish  
6 standards and qualifications for agricultural reserves.  
7 Agriculture in many parts of the Commonwealth is under urban  
8 pressure from expanding metropolitan areas. This urban pressure  
9 takes the form of scattered development in wide belts around  
10 urban areas, and brings conflicting land uses into  
11 juxtaposition, creates high costs for public services, and  
12 stimulates land speculation. When this scattered development  
13 extends into good farm areas, ordinances inhibiting farming tend  
14 to follow, farm taxes rise, and hopes for speculative gains  
15 discourage investments in farm improvements. Many of the  
16 agricultural lands in the Commonwealth are in jeopardy of being  
17 lost for any agricultural purposes. Certain of these lands  
18 constitute unique and irreplaceable land resources of Statewide  
19 importance. It is the purpose of this act to provide means by  
20 which agricultural land may be protected and enhanced as a  
21 viable segment of the Commonwealth's economy and as an economic  
22 and environmental resource of major importance.

23 It is further the purpose of this act to:

24 \* \* \*

25 (6) Encourage financial partnerships between State and  
26 local governments with nonprofit entities in order to  
27 increase the funds available for agricultural conservation  
28 easement purchases.

29 Section 2. Section 3 of the act is amended by adding a  
30 definition to read:

1 Section 3. Definitions.

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

5 \* \* \*

6 "Eligible nonprofit entity." An entity that provides the  
7 State board or an eligible county satisfactory proof of all of  
8 the following:

9 (1) That the entity is tax exempt under section  
10 501(c)(3) of the Internal Revenue Code of 1986 (Public Law  
11 99-514, 26 U.S.C. § 501(c)(3)).

12 (2) That the entity has experience acquiring, whether  
13 through purchase, donation or other transfer, an agricultural  
14 or other conservation easement.

15 \* \* \*

16 Section 3. Section 13(a) and (b) of the act, amended  
17 December 14, 1988 (P.L.1202, No.149), are amended to read:

18 Section 13. Limitation on certain governmental actions.

19 (a) Approval required for condemnation and for certain other  
20 actions by an agency of the Commonwealth.--No agency of the  
21 Commonwealth having or exercising powers of eminent domain shall  
22 condemn for any purpose any land within any agricultural  
23 security area which land is being used for productive  
24 agricultural purposes (not including the growing of timber)  
25 unless prior approval has been obtained in accordance with the  
26 criteria and procedures established in this section from the  
27 Agricultural Lands Condemnation Approval Board as established in  
28 section 306 of the act of April 9, 1929 (P.L.177, No.175), known  
29 as "The Administrative Code of 1929." The condemnation approval  
30 specified by this subsection shall not be required for an

1 underground public utility facility that does not permanently  
2 impact the tilling of soil or for any facility of an electric  
3 cooperative corporation or for any public utility facility the  
4 necessity for and the propriety and environmental effects of  
5 which has been reviewed and ratified or approved by the  
6 Pennsylvania Public Utility Commission or the Federal Energy  
7 Regulatory Commission. In addition, all State-funded development  
8 projects which might affect land in established agricultural  
9 security areas shall be reviewed by the appropriate local  
10 agricultural advisory committee and by the Agricultural Lands  
11 Condemnation Approval Board. Each reviewing body may suggest any  
12 modification to the State-funded development projects which  
13 ensures the integrity of the agricultural security areas against  
14 nonfarm encroachment.

15 (b) Approval required for condemnation by a political  
16 subdivision, authority, public utility or other body.--No  
17 political subdivision, authority, public utility or other body  
18 having or exercising powers of eminent domain shall condemn any  
19 land within any agricultural security area for any purpose,  
20 unless prior approval has been obtained from Agricultural Lands  
21 Condemnation Approval Board and from each of the following  
22 bodies: the governing bodies of the local government units  
23 encompassing the agricultural security area, the county  
24 governing body, and the Agricultural Security Area Advisory  
25 Committee. Review by the Agricultural Lands Condemnation  
26 Approval Board and the other indicated bodies shall be in  
27 accordance with the criteria and procedures established in this  
28 section. The condemnation approvals specified by this subsection  
29 shall not be required for an underground public utility facility  
30 that does not permanently impact the tilling of soil or for any

1 facility of an electric cooperative corporation or for any  
2 public utility facility the necessity for and the propriety and  
3 environmental effects of which has been reviewed and ratified or  
4 approved by the Pennsylvania Public Utility Commission or the  
5 Federal Energy Regulatory Commission, regardless of whether the  
6 right to establish and maintain such underground or other public  
7 utility facility is obtained by condemnation, or by agreement  
8 with the owner.

9 \* \* \*

10 Section 4. Section 14.1(a)(3)(vi) and (viii), (b)(2)(i)(B)  
11 and (C), (xi) and (xii), (b.1) introductory paragraph and  
12 (d)(1)(iii) of the act, amended or added December 21, 1998  
13 (P.L.1056, No.138), May 30, 2001 (P.L.103, No.14) and November  
14 1, 2005 (P.L.323, No.61), are amended, subsection (b)(2) is  
15 amended by adding a subparagraph, subsection (b)(2)(i) is  
16 amended by adding a clause, subsection (d)(1) is amended by  
17 adding a clause and the section is amended by adding a  
18 subsection to read:

19 Section 14.1. Purchase of agricultural conservation easements.

20 (a) State Agricultural Land Preservation Board.--The  
21 Department of Agriculture and the State Agricultural Land  
22 Preservation Board shall administer pursuant to this section a  
23 program for the purchase of agricultural conservation easements  
24 by the Commonwealth.

25 \* \* \*

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

28 \* \* \*

29 (vi) To purchase agricultural conservation easements  
30 jointly with a county, or jointly with a county and a

1 local government unit, or jointly with a county and an  
2 eligible nonprofit entity, or jointly with a county, a  
3 local government unit and an eligible nonprofit entity,  
4 if recommended by a county and approved by the State  
5 board as provided in subparagraph (iii).

6 \* \* \*

7 (viii) To establish and maintain a central  
8 repository of records which shall contain records of  
9 county programs for purchasing agricultural conservation  
10 easements, records of agricultural conservation easements  
11 purchased by local government units, by local government  
12 units and counties [and], by local government units and  
13 the Commonwealth, by eligible nonprofit entities in  
14 accordance with subsection (b.2), and records of  
15 agricultural conservation easements purchased by the  
16 Commonwealth. All records indicating the purchase of  
17 agricultural conservation easements shall refer to and  
18 describe the farm land subject to the agricultural  
19 conservation easement.

20 \* \* \*

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

28 \* \* \*

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

1 (i) \* \* \*

2 (A.1) Prior to exercising authority under  
3 subsection (b.2), to include in such rules and  
4 regulations, standards and procedures for the  
5 participation with eligible nonprofit entities in the  
6 purchase of agricultural conservation easements as  
7 described in subsection (b.2).

8 (B) To include in such rules and regulations,  
9 standards and procedures for the selection or  
10 purchase of agricultural conservation easements, in  
11 accordance with subsection (b.2), by the county  
12 solely [or jointly with either the Commonwealth or a  
13 local government unit, or both], or jointly with the  
14 Commonwealth, a local government unit, an eligible  
15 nonprofit entity, or any combination of these, on  
16 that portion of a parcel which is not within an  
17 agricultural security area if all of the following  
18 criteria are complied with:

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

22 (II) The majority of the farm's viable  
23 agricultural land is located within an existing  
24 agricultural security area. Upon purchase of an  
25 easement covering the portion of the parcel which  
26 is not located within an agricultural security  
27 area, that portion of the parcel shall  
28 immediately become part of the previously  
29 established agricultural security area which  
30 contains a majority of the farm's viable

1 agricultural land. The governing body which  
2 created the agricultural security area which  
3 contains a majority of the farm's viable  
4 agricultural land shall be responsible for the  
5 recording, filing and notification outlined in  
6 section 8(d) and (g) concerning land added to the  
7 agricultural security area pursuant to this  
8 clause.

9 (C) To include in such rules and regulations,  
10 standards and procedures for the selection or  
11 purchase of agricultural conservation easements, in  
12 accordance with subsection (b.2), by the county  
13 solely or jointly with [either] the Commonwealth  
14 [or], a local government unit, [or both] an eligible  
15 nonprofit entity, or any combination of these, on  
16 that portion of a parcel located in an adjoining  
17 county if all of the following criteria are complied  
18 with:

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

23 (II) Either a mansion house is located on  
24 that portion of the parcel which is within the  
25 purchasing county or the dividing line between  
26 the counties bisects the mansion house and the  
27 owner of the parcel has chosen the purchasing  
28 county as the situs of assessment for tax  
29 purposes or, if there is no mansion house on the  
30 parcel, the majority of the farm's viable

1 agricultural land is located in the purchasing  
2 county.

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

18 \* \* \*

19 (xi) To recommend to the State board the purchase of  
20 agricultural conservation easements by the Commonwealth  
21 and the county jointly[.], or jointly by the  
22 Commonwealth, the county and a local government unit, or  
23 jointly by the Commonwealth, the county and an eligible  
24 nonprofit entity, or jointly by the Commonwealth, the  
25 county, a local government unit and an eligible nonprofit  
26 entity.

27 (xii) To purchase agricultural conservation  
28 easements jointly with the Commonwealth[.], or jointly  
29 with the Commonwealth, the county and a local government  
30 unit, or jointly with the Commonwealth, the county and an

1 eligible nonprofit entity, or jointly with the  
2 Commonwealth, the county, a local government unit and an  
3 eligible nonprofit entity.

4 \* \* \*

5 (xvi) Notwithstanding any other permitted or  
6 required use of accrued interest distributed in  
7 accordance with section 8(b.1) and (b.2) of the act of  
8 December 19, 1974 (P.L.973, No.319), known as the  
9 "Pennsylvania Farmland and Forest Land Assessment Act of  
10 1974," to use any portion of that accrued interest in the  
11 following manner:

12 (A) To develop conservation plans.

13 (B) To monitor and enforce agricultural  
14 conservation easements, including the payment of  
15 legal costs associated with defending an agricultural  
16 conservation easement.

17 \* \* \*

18 (b.1) Local government unit participation.--Any local  
19 government unit that has created an agricultural security area  
20 may participate along with an eligible county and the  
21 Commonwealth, and an eligible nonprofit entity, in the  
22 preservation of farmland through the purchase of agricultural  
23 conservation easements.

24 \* \* \*

25 (b.2) Eligible nonprofit entity participation.--An eligible  
26 nonprofit entity may participate along with an eligible county,  
27 the Commonwealth and a local government unit eligible to  
28 participate under subsection (b.1), in the preservation of  
29 farmland through the purchase of agricultural conservation  
30 easements.

1           (1) The eligible nonprofit entity may purchase an  
2 agricultural conservation easement if all of the following  
3 apply:

4           (i) The agricultural conservation easement is a  
5 joint purchase with the county, and may include the  
6 Commonwealth or a local government unit, or both.

7           (ii) The deed of agricultural conservation easement  
8 is as prescribed by the State board for agricultural  
9 conservation easements purchased by the Commonwealth.

10          (2) The county board shall be responsible to record  
11 agricultural conservation easements where an eligible  
12 nonprofit entity is a party to the purchase of the easement.  
13 The easement shall be recorded by the county board in the  
14 office of the recorder of deeds of the county wherein the  
15 agricultural conservation easements are located. The county  
16 board shall submit to the State board a certified copy of  
17 agricultural conservation easements within 30 days after  
18 recording. The county board shall attach to all certified  
19 copies of the agricultural conservation easements submitted  
20 to the State board a description of the farmland subject to  
21 the agricultural conservation easements.

22          \* \* \*

23          (d) Program approval.--

24           (1) The standards, criteria and requirements established  
25 by the State board for State board approval of county  
26 programs for purchasing agricultural conservation easements  
27 shall include, but not be limited to, the extent to which the  
28 county programs consider and address the following:

29           \* \* \*

30           (iii) The stewardship of the land and use of

1 conservation practices and best land management  
2 practices, including, but not limited to, soil erosion  
3 and sedimentation control, as required by the act of June  
4 22, 1937 (P.L.1987, No.394), known as "The Clean Streams  
5 Law," and nutrient and odor management[.] as may be  
6 required by 3 Pa.C.S. Ch. 5 (relating to nutrient and  
7 odor management). A conservation plan shall only be  
8 required to be updated when a change in land management  
9 practice takes place or when a violation of "The Clean  
10 Streams Law" occurs.

11 \* \* \*

12 (v) (I) Provisions requiring a farmland tract to be  
13 contiguous acreage of at least 50 acres in size  
14 unless the tract is at least ten acres in size and is  
15 either utilized for a crop unique to the area or is  
16 contiguous to property which has a perpetual  
17 conservation easement in place held by a "qualified  
18 organization," as defined in section 170(h)(3) of the  
19 Internal Revenue Code of 1986 (Public Law 99-514, 26  
20 U.S.C. § 170(h)(3)).

21 (II) A county may require a farmland tract to be  
22 contiguous acreage of at least 35 acres in size  
23 unless the tract is at least ten acres in size and is  
24 either utilized for a crop unique to the area or is  
25 contiguous to a property which has a perpetual  
26 conservation easement in place held by a "qualified  
27 conservation organization," as defined in section  
28 170(h)(3) of the Internal Revenue Code of 1986. If a  
29 county implements the provisions of this subclause,  
30 State funds used for the purchase of an agricultural

1           conservation easement less than 50 acres in size may  
2           include costs incidental to the purchase and shall  
3           not exceed 50% of the purchase price per acre, unless  
4           it is at least ten acres in size and is either  
5           utilized for a crop unique to the area or is  
6           contiguous to a property which has a perpetual  
7           conservation easement in place held by a "qualified  
8           conservation organization," as defined in section  
9           170(h)(3) of the Internal Revenue Code of 1986. A  
10           county program shall require a minimum weighted value  
11           of 20% for prioritizing applications for agricultural  
12           conservation easement purchase when implementing the  
13           provisions of paragraph (ii.1).

14           \* \* \*

15           Section 5. Section 14.2(a) of the act, added December 14,  
16 1988 (P.L.1202, No.149), is amended to read:

17 Section 14.2. Agricultural Conservation Easement Purchase Fund.

18           (a) Purpose of fund.--

19           (1) The Agricultural Conservation Easement Purchase Fund  
20 shall be the source from which all moneys are authorized with  
21 the approval of the Governor to carry out the purpose of this  
22 act. [The]

23           (2) Except as set forth in paragraph 3, the moneys  
24 appropriated to the fund shall be utilized in accordance with  
25 the expenditures and distribution authorized, required or  
26 otherwise provided in the program for purchase of  
27 agricultural conservation easements contained in section  
28 14.1, for the purpose of paying all costs, except  
29 administrative costs, incurred by the Commonwealth or a  
30 county incident to the purchase of agricultural conservation

1 easements, and for the purpose of reimbursing nonprofit land  
2 conservation organizations for expenses incurred in acquiring  
3 and transferring agricultural conservation easements to the  
4 Commonwealth or a county.

5 (3) Each fiscal year, up to \$200,000 of the money in the  
6 fund may be used for the purpose of reimbursement allocation  
7 under section 14.6(b). Up to 10% of these funds may be used  
8 for administrative expenses of the department incurred under  
9 section 14.6(b).

10 \* \* \*

11 Section 6. Section 14.4(7) of the act, added December 14,  
12 1988 (P.L.1202, No.149), is amended to read:

13 Section 14.4. Legislative report.

14 The State board shall submit to the General Assembly an  
15 annual report no later than May 1. The report shall include, but  
16 not be limited to, the following information:

17 \* \* \*

18 (7) The number and value of agricultural conservation  
19 easements purchased jointly by the Commonwealth and the  
20 counties, including the number and value of purchases made  
21 during the preceding calendar and the preceding fiscal year  
22 of the Commonwealth, and the extent of local government unit  
23 or eligible nonprofit entity participation in the  
24 transaction.

25 \* \* \*

26 Section 6.1. The act is amended by adding sections to read:

27 Section 14.6. Land Trust Reimbursement Program.

28 (a) Establishment.--The Land Trust Reimbursement Program is  
29 hereby established.

30 (b) Reimbursement.--The State board may allocate funds to

1 reimburse land trusts for expenses incurred in acquiring  
2 agricultural conservation easements in this Commonwealth.

3 (c) Eligible expenses.--Eligible expenses include:

4 (1) Appraisals.

5 (2) Legal services.

6 (3) Title searches.

7 (4) Document preparation.

8 (5) Title insurance.

9 (6) Closing fees.

10 (7) Survey costs.

11 (d) Limitations.--

12 (1) Reimbursement shall be limited to \$5,000 per  
13 easement.

14 (2) The term of an agricultural conservation easement  
15 shall be perpetual.

16 (e) Eligibility.--To be eligible under this subsection, a  
17 land trust shall be an eligible nonprofit entity and shall:

18 (1) register with the State board;

19 (2) coordinate agricultural conservation easement  
20 purchase activities with the eligible county in which the  
21 activity occurs or coordinate such activities with the State  
22 board, if the activity does not occur within an eligible  
23 county; and

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

28 Section 14.7. Acquisitions by donation.

29 (a) General rule.--Notwithstanding any other provision of  
30 this act to the contrary, upon recommendation by an eligible

1 ~~county, the State board, an eligible nonprofit entity, or a~~ <—  
2 ~~local government unit may acquire by donation an agricultural~~  
3 ~~conservation easement if all of the following criteria are met~~

4 DONATION OF AN AGRICULTURAL CONSERVATION EASEMENT MAY BE <—  
5 ACQUIRED BY THE COUNTY, STATE BOARD, AN ELIGIBLE NONPROFIT  
6 ENTITY OR A LOCAL GOVERNMENT UNIT IF ALL OF THE FOLLOWING APPLY:

7 (1) The land is used for agricultural production.

8 (2) The term of the agricultural conservation easement  
9 is perpetual.

10 (3) The applicable county program provides for the  
11 acquisition by donation of an agricultural conservation  
12 easement.

13 (4) The agricultural conservation easement is an <—  
14 acquisition by donation by the applicable eligible county and  
15 may include the Commonwealth or BEING ACQUIRED BY DONATION BY <—  
16 AN ELIGIBLE COUNTY OR BY THE ELIGIBLE COUNTY IN CONJUNCTION  
17 WITH THE COMMONWEALTH, an eligible nonprofit entity or a  
18 local government unit, or any combination of these.

19 (5) Instruments and documents for the acquisition by  
20 donation of an agricultural conservation easement are  
21 approved by the State board or the county board, as the case  
22 may be, prior to execution and delivery. Proper releases from  
23 mortgage holders and lienholders must be obtained and  
24 executed to insure that all agricultural conservation  
25 easements are acquired by donation free and clear of all  
26 encumbrances.

27 (6) The agricultural conservation easement has title  
28 insurance.

29 (7) The deed of agricultural conservation easement is as  
30 prescribed by the State board for agricultural conservation

1 easements purchased by the Commonwealth.

2 (8) The applicable county board records an agricultural  
3 conservation easement acquired by donation by the county in  
4 the office of the recorder of deeds of the county wherein the  
5 agricultural conservation easement is located and submits to  
6 the State board a certified copy of the agricultural  
7 conservation easement within 30 days after recording.

8 (9) If the land does not meet the minimum criteria  
9 established by the State board for purchase of an  
10 agricultural conservation easement, the land shall be  
11 contiguous to property which is subject to an agricultural  
12 conservation easement.

13 (b) Expenses.--The allocation of a county may be adjusted by  
14 a maximum of \$5,000 per easement for all costs, except  
15 administrative costs, incurred by the Commonwealth or a county  
16 incident to the acquisition by donation of an agricultural  
17 conservation easement.

18 Section 7. The amendment or addition of the following  
19 provisions shall apply to an agricultural conservation easement  
20 jointly recorded with a recorder of deeds of this Commonwealth  
21 by an "eligible nonprofit entity," as defined in section 3 of  
22 the act, and a county or with the Commonwealth prior to or on  
23 the effective date of this section:

24 (1) The addition of section 2(6) of the act.

25 (2) The addition of the definition of "eligible  
26 nonprofit entity" in section 3 of the act.

27 (3) The following provisions of section 14.1 of the act:

28 (i) Subsection (a)(3)(vi) and (viii).

29 (ii) Subsection (b)(2)(i)(B) and (C), (xi) and

30 (xii).

1           (iii) The introductory paragraph of subsection  
2           (b.1).

3           (iv) Subsection (b.2).

4           (4) The amendment of section 14.4(7) of the act.

5           Section 7.1. The provisions of 7 Pa. Code § 138e.16(a)(2)  
6 are abrogated.

7           Section 8. This act shall take effect immediately.