

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 1320** Session of
1995INTRODUCED BY HECKLER, GERLACH, HELFRICK, AFFLERBACH, HART AND
SCHWARTZ, NOVEMBER 29, 1995SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
NOVEMBER 12, 1996

AN ACT

1 Amending the act of January 19, 1968 (1967 P.L.992, No.442)
2 entitled "An act authorizing the Commonwealth of Pennsylvania
3 and the counties thereof to preserve, acquire or hold land
4 for open space uses," expanding its scope to include all
5 local government units throughout this Commonwealth; adding
6 definitions for "local government unit," "planning
7 commission" and "transferable development rights"; providing
8 for local option and for transferable development rights; and
9 further providing for planning requirements, for limitations
10 on exercise of powers, for acquisitions of real property
11 interests, for public hearings, for property acquired in fee
12 simple, for assessment of property, for termination or other
13 disposition of open space property interests and for utility
14 rights-of-way and underground gas storage areas.

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

17 Section 1. The title and sections 1, 2, 3, 4, 5, 6 and 7 of
18 the act of January 19, 1968 (1967 P.L.992, No.442), entitled "An
19 act authorizing the Commonwealth of Pennsylvania and the
20 counties thereof to preserve, acquire or hold land for open
21 space uses" are amended to read:

AN ACT

23 Authorizing the Commonwealth of Pennsylvania and the [counties]

1 local government units thereof to preserve, acquire or hold
2 land for open space uses.

3 Section 1. Statement of Legislative Intent.--It is the
4 purpose of this act to clarify and broaden the existing methods
5 by which the Commonwealth and its local government units may
6 preserve land in or acquire land for open space uses. The
7 Legislature finds that it is important to preserve open space
8 [in and near urban areas] and to meet needs for recreation,
9 amenity, and conservation of natural resources, including farm
10 land, forests, and a pure and adequate water supply. The
11 acquisition and resale of property interests authorized by this
12 act are hereby declared to be for the public benefit, for the
13 advancement of the public health, safety, morals and general
14 welfare of the citizens of the Commonwealth, and for the
15 promotion of sound land development by preserving suitable open
16 space and concentrating more dense development in nearby areas.

17 Section 2. Definitions.--For the purpose of this act the
18 following definitions shall apply:

19 (1) "Open space benefits." The benefits to the citizens of
20 the Commonwealth and its local government units which result
21 from the preservation or restriction of the use of selected
22 predominantly undeveloped open spaces or areas, including but
23 not limited to: (i) the protection and conservation of water
24 resources and watersheds, by appropriate means, including but
25 not limited to preserving the natural cover, preventing floods
26 and soil erosion, protecting water quality and replenishing
27 surface and ground water supplies; (ii) the protection and
28 conservation of forests and land being used to produce timber
29 crops; (iii) the protection and conservation of farmland; (iv)
30 the protection of existing or planned park, recreation or

1 conservation sites; (v) the protection and conservation of
2 natural or scenic resources, including but not limited to soils,
3 beaches, streams, flood plains, steep slopes or marshes; (vi)
4 the protection of scenic areas for public visual enjoyment from
5 public rights of way; (vii) the preservation of sites of
6 historic, geologic or botanic interest; (viii) the promotion of
7 sound, cohesive, and efficient land development by preserving
8 open spaces between communities.

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

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

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

21 (5) ["County." A county, or a county authority having among
22 the purposes for which it was created the achievement of one or
23 more of the open space benefits set forth in this section.]

24 "Local government unit."

25 (i) a county;

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

29 (iii) a municipal corporation as defined in 1 Pa.C.S. § 1991
30 (relating to definitions) or any similar general purpose unit of

1 local government; or

2 (iv) any unit created by joint action of two or more local
3 government units which is now or shall hereafter be authorized
4 to be created by the General Assembly, including cooperation by
5 two or more local government units in accordance with the act of
6 July 12, 1972 (P.L.762, No.180), referred to as the
7 Intergovernmental Cooperation Law.

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

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

20 Section 3. Planning Requirements.--The Department of
21 [Forests and Waters] Conservation and Natural Resources and the
22 Department of Agriculture shall not acquire any interest in real
23 property under the provisions of this act, unless said real
24 property has been designated for open space uses in a resource,
25 recreation, or land use plan submitted to and approved by the
26 State Planning Board. A [county] local government unit shall not
27 acquire any interest in real property under the provisions of
28 this act unless said real property has been designated for open
29 space uses in a resource, recreation or land use plan [approved]
30 recommended by the [County Planning Commission.] planning

1 commission of the municipality in which the real property is
2 located and adopted by the governing body of that municipality.
3 Where the municipality in which the real property to be acquired
4 is located has no planning commission, a local government unit
5 shall not acquire any interest in real property under the
6 provisions of this act unless said real property has been
7 designated for open space uses in a resource, recreation or land
8 use plan approved by the planning commission of the county in
9 which the real property is located and adopted by the governing
10 body of the municipality wherein the real property is located.

11 Section 4. Applicability.--The Commonwealth of Pennsylvania,
12 through the Department of [Forests and Waters] Conservation and
13 Natural Resources or the Department of Agriculture, may exercise
14 the powers granted by this act only with the consent of the
15 county commissioners of the county in which the real property is
16 situated. All [counties] local government units may exercise the
17 powers granted by this act[, without limitation as to area].

18 Section 5. Acquisition of Interests in Real Property.--(a)
19 The Commonwealth of Pennsylvania, through the Department of
20 [Forests and Waters] Conservation and Natural Resources, may
21 acquire any interest in real property by purchase, contract,
22 condemnation, gift, devise or otherwise, for any of the
23 following purposes:

24 (1) To protect and conserve water resources and watersheds;

25 (2) To protect and conserve forests and land being used to
26 produce timber crops;

27 (3) To protect an existing or planned park, forest, wildlife
28 preserve, nature reserve or other recreation or conservation
29 site by controlling the use of contiguous or nearby lands in
30 order to protect the scenic, aesthetic or watershed values of

1 the site;

2 (4) To protect and conserve natural or scenic resources,
3 including but not limited to soils, beaches, streams, flood
4 plains or marshes;

5 (5) To protect scenic areas for public visual enjoyment from
6 public rights of way;

7 (6) To preserve sites of historic, geologic or botanic
8 interest;

9 (7) To promote sound, cohesive, and efficient land
10 development by preserving open spaces between communities;

11 (8) To limit the use of the real property so as to achieve
12 open space benefits by reselling real property acquired in fee
13 simple, subject to restrictive covenants or easements limiting
14 the use thereof for the purposes specified in clauses (1)
15 through (7) hereof.

16 (b) The Commonwealth of Pennsylvania, through the Department
17 of Agriculture, may acquire any interest in real property by
18 purchase, contract, gift, or devise for any of the following
19 purposes:

20 (1) To protect and conserve farmland;

21 (2) To protect and conserve water resources and watersheds;

22 (3) To limit the use of real property so as to achieve open
23 space benefits by reselling real property acquired in fee
24 simple, subject to restrictive covenants or easements limiting
25 the use thereof for the purposes specified in clauses (1) and
26 (2) hereof.

27 (c) [Counties] (1) A local government unit may acquire any ←
28 interest in real property situate within its boundaries by
29 purchase, contract, condemnation, gift, devise or otherwise, for
30 any of the purposes set forth in clauses [(a) (1) through (a)

1 (8)] (1) through (8) of subsection (a) of this section, and may
2 acquire any interest in real property situate within its
3 boundaries by purchase, contract, gift or devise, for any of the
4 purposes set forth in clause [(b) (1)] (1) of subsection (b) of
5 this section[.], including limiting the use of real property to
6 achieve open space benefits by reselling real property acquired
7 in fee simple, subject to restrictive covenants or easements
8 limiting the use thereof for the purposes set forth in clauses
9 (1) through (7) of subsection (a) and clause (1) of subsection
10 (b) of this section.

11 (2) During the time that real property or any interest in
12 real property acquired by a local government unit for open space
13 purposes in accordance with this act is held by the local
14 government unit, the real property shall be ineligible for the
15 purchase of agricultural conservation easements authorized in
16 the act of June 30, 1981 (P.L.128, No.43), known as the
17 "Agricultural Area Security Law."

18 Section 6. Public Hearing.--Interests in real property to be
19 acquired pursuant to the provisions of this act shall be
20 designated by the Department of [Forests and Waters]
21 Conservation and Natural Resources, the Department of
22 Agriculture or [the county] a local government unit, whichever
23 is acquiring them. After such designation, the said interests
24 shall not be acquired until a public hearing is held and after
25 notice to all owners of said interests in real property and to
26 [the municipalities in which county said interests in real
27 property are located, in each county where the land is situate]
28 any local government unit in which land is situate, at which
29 hearing the department or [county] local government unit
30 concerned shall set forth the interests to be taken and their

1 proposed open space benefits. At the public hearing persons and
2 municipalities affected by the proposed acquisition of interests
3 in real property shall have an opportunity to present relevant
4 evidence.

5 Section 7. Property Acquired in Fee Simple.--If the owner of
6 the interests in real property to be acquired pursuant to the
7 provisions of this act prefers to have the Commonwealth or the
8 [county] local government unit acquire the property in fee
9 simple, the Commonwealth or the [county] local government unit
10 shall be required to acquire the property in fee simple. All
11 real property acquired in fee simple by the Commonwealth,
12 through either the Department of [Forests and Waters]
13 Conservation and Natural Resources or the Department of
14 Agriculture, or by a [county] local government unit, under the
15 provisions of this act, shall be offered for resale publicly in
16 the manner provided by law within two years of the date of
17 acquisition, subject to restrictive covenants or easements
18 limiting the land to such open space uses as may be specified by
19 the designating department or agency in accordance with section
20 6 hereof, and consistent with the resource, recreation, or land
21 use plan established in accordance with section 4 hereof. In the
22 case of the Commonwealth, such resales may be made without
23 specific authority of the General Assembly and shall be through
24 the Department of [Property and Supplies] General Services at
25 public sale in the manner provided by law.

26 Section 2. The act is amended by adding sections to read:

27 Section 7.1. Local Taxing Options.--(a) A local government
28 unit, excluding counties and county authorities, may, by
29 ordinance, impose, in addition to the statutory rate limits on
30 real estate taxes set forth in the municipal code of that local

1 government unit, a tax on real property not exceeding the
2 millage authorized by referendum under this subsection. In the
3 alternative, a local government unit, excluding counties and
4 county authorities, may by ordinance impose, in addition to the
5 earned income tax rate limit set forth in the act of December
6 31, 1965 (P.L.1257, No.511), known as "The Local Tax Enabling
7 Act," a tax on THE earned income OF THE RESIDENTS OF THAT LOCAL ←
8 GOVERNMENT UNIT not exceeding the rate authorized by referendum
9 under this subsection. Revenue from the levy shall be used to
10 retire the indebtedness incurred in purchasing interests in real
11 property or in making additional acquisitions of real property
12 for the purpose of securing an open space benefit or benefits
13 under the provisions of this act or the act of June 30, 1981
14 (P.L.128, No.43), known as the "Agricultural Area Security Law."
15 The local taxing option authorized by this subsection shall not
16 be exercised unless the governing body of the local government
17 unit shall by ordinance first provide for a referendum on the
18 question of the imposition at a specific rate of the additional
19 tax to be imposed and a majority of those voting on the
20 referendum question vote in favor of the imposition of the tax.
21 The ordinance of the governing board of the local government
22 unit providing for a referendum on the question shall be filed
23 with the county board of elections. The referendum shall be
24 governed by the provisions of the act of June 3, 1937 (P.L.1333,
25 No.320), known as the "Pennsylvania Election Code." The election
26 official shall cause the question to be submitted to the
27 electors of the local government unit at the next primary,
28 general or municipal election occurring not less than the
29 thirteenth Tuesday following the filing of the ordinance with
30 the county board of elections. At such election, the question

1 shall be submitted to the voters in the same manner as other
2 questions are submitted under the provisions of the
3 "Pennsylvania Election Code." The question to be placed upon the
4 ballot shall be framed in the following form:

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

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

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

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

16 (3) real property whose TDR's have been transferred and
17 retired by a local government unit without their development
18 potential having occurred on other lands; provided that the
19 exemption from further millage increases for real property as
20 provided for in clause (1), (2) or (3) of this subsection shall
21 be authorized only for real property qualifying for such
22 exemption under the provisions of section 2(b)(1) of Article
23 VIII of the Constitution of Pennsylvania. If the board so
24 resolves, the millage freeze authorized herein shall apply to
25 all eligible real property, whether the real property met the
26 criteria of this subsection prior to or subsequent to the date
27 of the resolution imposing the millage freeze. For prior
28 acquisitions, the date on which the millage rate shall be frozen
29 is the date of the resolution. For subsequent acquisitions, the
30 date on which the millage rate shall be frozen is the date the

1 local government unit completes the acquisition. The school
2 district shall give prompt notice to the appropriate tax
3 collection agent of the exact amount of the millage, the date it
4 was frozen, and each parcel to which the freeze applies. The
5 exemptions granted under this act shall not be considered by the
6 State Tax Equalization Board in deriving the market value of
7 school district real property so as to reduce the subsidy to
8 that school district or to increase the subsidy to any other
9 school district.

10 Section 7.2. Procedures to be Followed in Connection with
11 Acquisition of Real Property or Open Space Property Interests.--

12 (a) A local government unit shall not acquire interests in real
13 property pursuant to this act unless that local government unit
14 has by ordinance or resolution established procedures for
15 reviewing open space property interests considered for
16 acquisition by the local government unit, for rating the
17 relative desirability of interests in particular parcels of real
18 estate, and for establishing the price the local government unit
19 will pay.

20 (b) When a local government unit acquires an interest in
21 real property as authorized under the provisions of this act, it
22 shall establish and maintain a repository of records of the
23 interests in real property which have been or are acquired by
24 the local government. The local government unit shall also
25 record each interest in real property acquired by the local
26 government unit in the office of the recorder of deeds for the
27 county in which the real property is located.

28 (c) A local government unit acquiring interests in real
29 property shall submit to the school district within which the
30 real property is located a copy of the deed reflecting the open

1 space property interest acquisition certified by the county
2 recorder of deeds.

3 Section 7.3. Acquisition of Open Space Property Interests on
4 an Installment Basis.--A local government unit may authorize the
5 establishment of a program to purchase open space property
6 interests on an installment or other deferred basis. The
7 obligation of the local government unit to make payments on an
8 installment or other deferred basis shall not be subject to the
9 requirements of section 602(b) or (c) of the act of July 12,
10 1972 (P.L.781, No.185), known as the "Local Government Unit Debt
11 Act." A landowner who enters into an installment agreement with
12 a local government unit shall receive, in addition to the
13 selling price, interest in an amount or at a rate set forth in
14 the purchase agreement.

15 Section 3. Sections 8, 9 and 10 of the act are amended to
16 read:

17 Section 8. Exercise of Eminent Domain.--(a) Use of the
18 power of eminent domain to acquire interests in real property
19 for the purposes of this act shall be exercised in accordance
20 with the provisions of the Eminent Domain Code of the
21 Commonwealth.

22 (b) Notwithstanding the provisions of subsection (a) or
23 section 5(c), local government units other than counties or
24 county authorities may not exercise the power of eminent domain
25 in carrying out the provisions of this act.

26 Section 9. Assessment.--Any open space property interest
27 acquired by the Commonwealth or a [county] local government unit
28 under this act is held for public purposes, and shall be exempt
29 from taxation. The assessment of private interests in land
30 subject to open space property interests under this act shall

1 reflect any change in market value of the property which may
2 result from the acquisition of open space property interests by
3 the Commonwealth or a [county] local government unit.

4 Section 10. Termination or Disposition of Open Space
5 Property Interests.--(a) If the Commonwealth, through either
6 the Department of [Forests and Waters] Conservation and Natural
7 Resources or the Department of Agriculture with the approval of
8 the State Planning Board, or a county or county authority with
9 the approval of its County Planning Commission, determines that
10 it is essential for the orderly development of an area to
11 terminate or sell open space property interests acquired under
12 this act other than property held in fee simple, the
13 Commonwealth or the county or county authority shall offer to
14 transfer to the original property owner from whom said property
15 interests other than fee simple were acquired, or his estate if
16 the original property owner, or his estate, is the current
17 property owner, said property interests at a price which shall
18 be equal to the price paid by the Commonwealth or the county or
19 county authority to the original property owner for said
20 interests; and, if said offer is not accepted within ninety
21 days, the Commonwealth or the county or county authority shall
22 then sell the open space property interests at public sale in
23 the manner provided by law. In the case of the Commonwealth,
24 such transfer or sale may be made without specific authority of
25 the General Assembly, and shall be through the Department of
26 [Property and Supplies] General Services at public sale in the
27 manner provided by law.

28 (b) If the local government unit, excluding counties and
29 county authorities, with the approval of the planning commission
30 servicing the municipality in which the real property is located,

1 determines that it is essential for the orderly development of
2 an area to terminate or sell open space property interests
3 acquired under this act other than property held in fee simple,
4 the local government unit shall offer to transfer to the
5 original property owner from whom said open space property
6 interests other than fee simple were acquired, or his estate if
7 the original property owner or his estate is the current
8 property owner, said property interests at a price which shall
9 be equal to the price paid by the local government unit to the
10 original property owner for said interests. If the local
11 government unit's offer is not accepted within ninety days, the
12 local government unit shall then sell the open space property
13 interests at public sale in the manner provided by law. Before
14 any open space property interests are disposed of by a local
15 government unit, the officials of the local government unit must
16 first put the question to its electorate at the time and place
17 of any general, municipal or primary election to determine if a
18 majority of the voters participating in said election assent to
19 the proposed disposition of the specific open space property
20 interests.

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

22 Section 10.1. Transfer Development Rights.--If a TDR is
23 acquired under this act by a local government unit, it may be
24 disposed of in any manner recommended by the planning commission
25 and adopted by the governing body of that local government unit.

26 Section 5. Section 11 of the act is amended to read:

27 Section 11. Utility Rights of Way; Underground Gas
28 Storage.--(a) The ownership by the Commonwealth or a [county]
29 local government unit of an open space property interest shall
30 not preclude the acquisition, by lease, purchase, or eminent

1 domain, and use of rights of way or underground gas storage
2 rights in such property by a public utility or other body
3 entitled to exercise the power of eminent domain.], if in the
4 case of an acquisition by a body other than a public utility the
5 State Planning Board, or, in the case of ownership by a county,
6 the County Planning Commission, after notice to the Department
7 of Forests and Waters or the Department of Agriculture as the
8 case may be, after public hearing, shall approve such
9 acquisition, or in the case of acquisition by a public utility
10 if the Pennsylvania Public Utility Commission, after notice to
11 the Department of Forests and Waters, the Department of
12 Agriculture, or the county, as the case may be, and after public
13 hearing, shall find that such acquisition and use are necessary
14 or proper for the service, accommodation, convenience or safety
15 of the public.] In the case of an acquisition from the
16 Commonwealth by a body other than a public utility, such
17 acquisition shall occur only if the State Planning Board, after
18 public hearing with notice to the Department of Conservation and
19 Natural Resources or the Department of Agriculture, as the case
20 may be, shall approve such acquisition. In the case of an
21 acquisition from a local government unit by a body other than a
22 public utility, such acquisition shall occur only if the
23 governing body, after public hearing with notice to the public,
24 shall approve such acquisition. In the case of an acquisition
25 from the Commonwealth or a local government unit by a public
26 utility, such acquisition shall occur only if the Pennsylvania
27 Public Utility Commission, after public hearing with notice to
28 the Department of Conservation and Natural Resources, the
29 Department of Agriculture or the local government unit, as the
30 case may be, shall find that such acquisition and use are

1 necessary or proper for the service, accommodation, convenience
2 or safety of the public.

3 (b) (1) Notice of public hearing given in accordance with
4 subsection (a) shall include a statement of the purpose of the
5 public hearing and the date, time and place of the public
6 hearing.

7 (2) In the case of notice to the appropriate department or
8 local government unit as specified in subsection (a), the notice
9 shall be sent by United States First Class Mail at least twenty
10 days prior to the hearing.

11 (3) In all cases where a public hearing is to be held in
12 accordance with subsection (a), notice to the public shall be
13 given by publication one time at least twenty days prior to the
14 hearing, in a newspaper of general circulation in the area where
15 the open space land is located and written notice shall be
16 conspicuously posted at points deemed sufficient by the body
17 conducting the public hearing to notify potentially interested
18 citizens. The affected open space tract shall be posted at least
19 ten days prior to the hearing.

20 Section 6. This act shall take effect immediately.